

Exhibit A

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3

4 CHASOM BROWN, WILLIAM BYATT,
5 JEREMY DAVIS, CHRISTOPHER
6 CASTILLO, and MONIQUE
7 TRUJILLO individually and on
8 behalf of all other similarly No.
9 situated, 4:20-cv-03664-YGR-SVK

10 Plaintiffs,

11 vs.

12 GOOGLE LLC,

13 Defendant.
14 _____/

15 VIDEO-RECORDED DEPOSITION OF DAVID NELSON

16 REMOTE ZOOM PROCEEDING

17 Tampa, Florida

18 Wednesday, July 6, 2022

19 REPORTED BY:

20 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

21 Pages 1 - 126

22 Job No. 5302302

23 Page 1

<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 CHASOM BROWN, WILLIAM BYATT, 5 JEREMY DAVIS, CHRISTOPHER 6 CASTILLO, and MONIQUE 7 TRUJILLO individually and on 8 behalf of all other similarly No. 9 situated, 4:20-cv-03664-YGR-SVK 10 11 Plaintiffs, 12 13 vs. 14 15 GOOGLE LLC, 16 17 Defendant. 18 19 _____/ 20 21 Video-recorded deposition of DAVID NELSON, taken 22 on behalf of the Defendant, Remote Zoom Proceeding from 23 Tampa, Florida, beginning at 12:04 p.m. Eastern Daylight 24 Time and ending at 3:50 p.m. Eastern Daylight Time, on 25 Wednesday, July 6, 2022, before Leslie Rockwood Rosas, RPR, CSR No. 3462.</p>	<p>1 APPEARANCES (Continued): 2 3 BOIES SCHILLER FLEXNER LLP 4 BY: ALISON L. ANDERSON, ESQ. 5 725 South Figueroa Street, 31st Floor 6 Los Angeles, California 90017 7 (213) 995-5720 8 alanderson@bsflp.com 9 10 FOR THE DEFENDANT: 11 QUINN EMANUEL URQUHART & SULLIVAN, LLP 12 BY: CARL W. SPILLY, ESQ. 13 1300 I Street NW, Suite 900 14 Washington, D.C. 20005 15 (202) 538-8000 16 carlspilly@quinnemanuel.com 17 18 BY: STEPHEN A. BROOME, ESQ. 19 865 South Figueroa Street, 10th Floor 20 Los Angeles, California 90017 21 (213) 443-3000 22 stephenbroome@quinnemanuel.com 23 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 FOR THE PLAINTIFFS: 4 MORGAN & MORGAN 5 BY: RYAN MCGEE, ESQ. 6 JOHN YANCHUNIS, ESQ. 7 201 North Franklin Street, 7th Floor 8 Tampa, Florida 33602 9 (813) 223-5505 10 rmcgee@forthepeople.com 11 jyanchunis@forthepeople.com 12 13 BOIES SCHILLER FLEXNER LLP 14 BY: HSIAO (MARK) C. MAO, ESQ. 15 44 Montgomery Street, 41st Floor 16 San Francisco, California 91401 17 (415) 293-6800 18 mmao@bsflp.com 19 20 BY: JAMES LEE, ESQ. 21 100 SE Second Street, Suite 2800 22 Miami, Florida 33131 23 (305) 539-8400 24 jlee@bsflp.com 25</p>	<p>1 APPEARANCES (Continued): 2 3 Also Present: 4 Liam Timmons, Summer Associate, Quinn Emanuel 5 Urquhart & Sullivan, LLP 6 Robert Fenton, Videographer 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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1	I N D E X	1	Tampa, Florida; Wednesday, July 6, 2022
2		2	12:04 P.M.
3		3	
4	WEDNESDAY, JULY 6, 2022	4	PROCEEDINGS
5		5	THE VIDEOGRAPHER: Good afternoon. We are on 12:03:50
6	WITNESS EXAMINATION	6	the record. The time is 12:04 p.m. Eastern Time.
7	DAVID NELSON	7	Today's July 6th, 2022.
8		8	Please note that this deposition is being
9	BY MR. SPILLY 10, 118	9	conducted virtually. The quality of recording depends on
10	BY MR. MCGEE 107, 120	10	the quality of camera and internet connection of 12:04:06
11		11	participants. What is seen from the witness and heard on
12	QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:	12	screen is what will be recorded. Audio and video
13	(NONE)	13	recording will continue to take place unless all parties
14		14	agree to go off the record.
15		15	This is Media Unit 1 of the video-recorded 12:04:20
16		16	deposition of David Nelson, taken by counsel for
17		17	Defendant, in the matter of Chasom Brown versus Google
18		18	LLC, filed in the United States District Court, Northern
19		19	District of California, San Jose Division, Case Number
20		20	4:20-cv-03664-YGR-SVK. 12:04:40
21		21	This deposition is being conducted remotely
22		22	using virtual technology.
23		23	My name is Robert Fenton, representing Veritext
24		24	Legal Solutions, and I am the videographer. The court
25		25	reporter is Leslie Rockwood from the firm Veritext Legal 12:05:04
	Page 6		Page 8
1	DEPOSITION EXHIBITS	1	Solutions. I am not related to any party in this action,
2	DAVID NELSON	2	nor am I financially interested in the outcome.
3	NUMBER DESCRIPTION IDENTIFIED	3	If there are any objections to proceeding,
4	Exhibit 1 Expert Rebuttal Report of 17	4	please state them at the time of your appearance.
5	David Nelson	5	Counsel and all present, including remotely, will now 12:05:21
6	Exhibit 2 Curriculum Vitae, 21	6	state their appearances and affiliations for the record,
7	Confidential	7	beginning with the noticing attorney.
8	Exhibit 3 Report to Congress on the Use 72	8	MR. SPILLY: Carl Spilly from Quinn Emanuel on
9	of Administrative Subpoena	9	behalf of Google. I'm also joined today by Stephen
10	Authorities by Executive	10	Broome and Liam Timmons from Quinn Emanuel. 12:05:38
11	Branch Agencies and Entities	11	MR. MCGEE: Good afternoon. Ryan McGee from the
12	Exhibit 4 Administrative subpoenas, 18 76	12	law firm of Morgan & Morgan. I will be defending the
13	USCA Section 3486	13	deposition. I am joined by John Yanchunis, also of
14	Exhibit 5 Screenshots from the United 85	14	Morgan & Morgan, as well as Mark Mao, James Lee and
15	States Department of Justice	15	Alison Anderson of the law firm Boies, Schiller & 12:05:57
16	website	16	Flexner.
17	Exhibit 6 18 USCA Section 2706 99	17	THE REPORTER: Thank you.
18	Exhibit 7 Order on Plaintiffs' Motion 108	18	Mr. Nelson, if you would raise your right hand,
19	for Sanctions for Discovery	19	please, I'll swear you in.
20	Misconduct, Redacted Version	20	You do solemnly state that the evidence you
21	of Document Sought to be	21	shall give in this matter shall be the truth, the whole
22	Sealed	22	truth and nothing but the truth, so help you God?
23		23	THE WITNESS: I do.
24		24	THE REPORTER: Thank you, sir.
25		25	You may proceed, Counsel. 12:06:17
	Page 7		Page 9

<p>1</p> <p>2 EXAMINATION</p> <p>3 BY MR. SPILLY:</p> <p>4 Q. All right. Good afternoon, Mr. Nelson. My</p> <p>5 name's Carl Spilly. I represent Google. 12:06:24</p> <p>6 A. Good afternoon, sir.</p> <p>7 Q. I will be taking your deposition today.</p> <p>8 Can you state your full name for the record?</p> <p>9 A. David E. Nelson.</p> <p>10 Q. Is there anyone in the room with you today? 12:06:33</p> <p>11 A. No.</p> <p>12 Q. And on your computer screen, do you have any</p> <p>13 applications open?</p> <p>14 A. I have Apple Safari, which has the Veritext</p> <p>15 Exhibit Share window open. 12:06:47</p> <p>16 Q. Okay. You don't have any communications</p> <p>17 applications open; is that correct?</p> <p>18 A. No. I quit all programs on the computer and</p> <p>19 turned on my focus mode do not disturb.</p> <p>20 Q. Okay. Is your phone nearby? 12:07:01</p> <p>21 A. It's next to me, yes.</p> <p>22 Q. Okay. Do you have any documents with you?</p> <p>23 A. I have my expert report printed out next to my</p> <p>24 computer.</p> <p>25 Q. Okay. Have you ever been deposed before? 12:07:18</p> <p>Page 10</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Is there anything that would prevent you from</p> <p>3 testifying fully and truthfully to the best of your</p> <p>4 ability today?</p> <p>5 A. No, sir. 12:08:34</p> <p>6 Q. Okay. Are you sick today?</p> <p>7 A. No.</p> <p>8 Q. Have you taken any medication in the past</p> <p>9 48 hours that would impact your ability to testify?</p> <p>10 A. Nothing that would impact my ability to testify. 12:08:43</p> <p>11 Q. Okay. So at various points today your attorney</p> <p>12 will raise objections to my questions. Those objections</p> <p>13 are primarily directed at me and are for the record.</p> <p>14 Unless your attorney instructs you not to answer a</p> <p>15 question, I'd ask that you please answer the question. 12:09:01</p> <p>16 Can you do that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did you do anything to prepare for this</p> <p>19 deposition?</p> <p>20 A. I met with the lawyers from Morgan & Morgan. We 12:09:10</p> <p>21 had several conference calls. I worked on my expert</p> <p>22 report, and I refreshed my memory on some of the legal</p> <p>23 statutes surrounding the Electronic Communication Privacy</p> <p>24 Act.</p> <p>25 Q. Okay. Which lawyers from Morgan & Morgan did 12:09:28</p> <p>Page 12</p>
<p>1 A. In civil matters, no. In criminal matters, yes.</p> <p>2 Q. Okay. So I'll go over some rules of the road</p> <p>3 for you. Sir, I'm going to be asking you a series of</p> <p>4 questions. My questions and your answers will be</p> <p>5 recorded by the court reporter. Do you understand that 12:07:31</p> <p>6 you need to speak loudly and clearly so that the court</p> <p>7 reporter can hear you?</p> <p>8 A. Yes.</p> <p>9 Q. And the court reporter will also have trouble if</p> <p>10 we talk over each other, so it's important that you wait 12:07:44</p> <p>11 until I finish my question before you begin answering.</p> <p>12 Can you do that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. And I will take breaks at various</p> <p>15 points in the questioning. Let me know if you need to 12:07:57</p> <p>16 take a break at any point. I would only ask that you</p> <p>17 don't take a break when a question is pending.</p> <p>18 Can you do that?</p> <p>19 A. No problem, sir.</p> <p>20 Q. All right. You've just taken an oath that 12:08:07</p> <p>21 requires you to tell the truth. Do you understand that</p> <p>22 you're under oath today?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And do you understand that that is the same oath</p> <p>25 you would take if you were to testify in court? 12:08:18</p> <p>Page 11</p>	<p>1 you meet with?</p> <p>2 A. Primarily Ryan McGee and John Yanchunis and then</p> <p>3 some of the other lawyers with the other law firm,</p> <p>4 Mark -- I don't recall his last name off the top of my</p> <p>5 head, but I could get it for you, obviously. I don't 12:09:49</p> <p>6 recall the names of the other attorneys.</p> <p>7 Q. Is that Mark Mao that you're referring to there?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And how long in total did you spend</p> <p>10 preparing for this deposition? 12:10:08</p> <p>11 A. So preparing for the deposition, probably two</p> <p>12 weeks. I was initially contacted about a month ago,</p> <p>13 maybe six weeks ago, by Morgan & Morgan regarding this</p> <p>14 matter.</p> <p>15 Q. When was the first time Morgan & Morgan reached 12:10:25</p> <p>16 out to you about this matter?</p> <p>17 A. I believe it was around May 29th. I can check</p> <p>18 my -- I can check a document on my computer and confirm</p> <p>19 that if you need.</p> <p>20 Q. How many -- so you said you had some conference 12:10:38</p> <p>21 calls with them before this deposition. How many did you</p> <p>22 have?</p> <p>23 A. Probably five or six.</p> <p>24 Q. All right. And how long in total did you spend</p> <p>25 on those calls? 12:10:55</p> <p>Page 13</p>

<p>1 A. Anywhere from 15 minutes to a couple of hours.</p> <p>2 Q. Did you review any documents during those</p> <p>3 meetings?</p> <p>4 A. I reviewed Professor Zervas' expert report and</p> <p>5 my expert report. 12:11:13</p> <p>6 Q. Okay. And no other documents during those</p> <p>7 meetings; is that correct?</p> <p>8 A. During those meetings, no, I don't believe so.</p> <p>9 Q. Okay. Did you speak to anyone other than</p> <p>10 plaintiffs' lawyers in preparation for this deposition? 12:11:30</p> <p>11 A. No.</p> <p>12 Q. Did you take any notes during the meetings with</p> <p>13 plaintiffs' attorneys to prepare for this deposition?</p> <p>14 A. No, no. Nothing that isn't in my expert report.</p> <p>15 Q. Did anyone else take notes during those 12:11:47</p> <p>16 meetings?</p> <p>17 A. I don't know.</p> <p>18 Q. Are you familiar with the other experts</p> <p>19 plaintiffs have retained in this case?</p> <p>20 A. I am not. 12:11:59</p> <p>21 Q. So you have not communicated with any other</p> <p>22 experts that plaintiffs retained for this case; is that</p> <p>23 correct?</p> <p>24 A. That's correct, sir.</p> <p>25 Q. Did you read any of the other expert reports 12:12:09</p> <p style="text-align: right;">Page 14</p>	<p>1 Q. Was that the first time that you reviewed the</p> <p>2 Complaint?</p> <p>3 A. Yes, sir.</p> <p>4 Q. So I think you said May 29th was the first time</p> <p>5 that you were contacted about this case; is that correct? 12:13:20</p> <p>6 A. Yes, to the best of my knowledge. I have it in</p> <p>7 my computer, and I can confirm if you need the exact</p> <p>8 date.</p> <p>9 Q. When -- maybe at a break you could look up that</p> <p>10 date and we can clear it up. 12:13:33</p> <p>11 A. Sure. No problem.</p> <p>12 Q. When -- all right. So you were first contacted</p> <p>13 May 29th, and then when were you actually signed on or</p> <p>14 retained by plaintiffs to serve as an expert for them in</p> <p>15 this case? 12:13:57</p> <p>16 A. It would have been in early June, and again, I</p> <p>17 have a recording of that date. I have -- in my computer</p> <p>18 file.</p> <p>19 Q. Okay. And who specifically from Morgan & Morgan</p> <p>20 contacted you? 12:14:08</p> <p>21 A. Initially it was David Reign, one of their</p> <p>22 investigators.</p> <p>23 Q. Okay. Can you spell that last name for me?</p> <p>24 A. R-E-I-G-N.</p> <p>25 Q. And what were you asked to do by Mr. Reign when 12:14:24</p> <p style="text-align: right;">Page 16</p>
<p>1 written by plaintiffs' experts in this case?</p> <p>2 A. No, sir.</p> <p>3 Q. So you have not read Jonathan Hochman's expert</p> <p>4 reports; is that correct?</p> <p>5 A. That's correct, sir. 12:12:22</p> <p>6 Q. You have not read Stephen Weisbrot's expert</p> <p>7 reports; is that correct?</p> <p>8 A. That's correct, sir.</p> <p>9 Q. You have not read Michael Lasinski's expert</p> <p>10 report; is that correct? 12:12:33</p> <p>11 A. That's correct, sir.</p> <p>12 Q. You have not read Mark Keegan's expert report;</p> <p>13 correct?</p> <p>14 A. That's correct, sir.</p> <p>15 Q. And you have not reviewed Bruce Schneier's 12:12:41</p> <p>16 expert report; is that right?</p> <p>17 A. That's correct, sir.</p> <p>18 Q. Have you reviewed any of the complaints files by</p> <p>19 the plaintiffs in this case?</p> <p>20 A. I reviewed -- I skimmed the Complaint last night 12:12:54</p> <p>21 that Ryan McGee from Morgan & Morgan sent me, but I</p> <p>22 didn't read it thoroughly.</p> <p>23 Q. How much time did you spend reviewing the</p> <p>24 Complaint last night?</p> <p>25 A. Probably 30 minutes. 12:13:09</p> <p style="text-align: right;">Page 15</p>	<p>1 he first reached out to you?</p> <p>2 A. To have a discussion with Mr. Ryan McGee about a</p> <p>3 case that they thought I might be able to contribute to.</p> <p>4 Q. How did they think you might be able to</p> <p>5 contribute to the case? 12:14:45</p> <p>6 A. Because of my cyber background with the FBI.</p> <p>7 Q. Okay. And then what were you asked to do after</p> <p>8 that discussion with Mr. Reign?</p> <p>9 A. I was asked to review Professor Zervas' expert</p> <p>10 report and produce a report rebutting some of the 12:15:02</p> <p>11 statements in Professor Zervas' report.</p> <p>12 Q. Okay. How many hours have you worked on this</p> <p>13 matter thus far?</p> <p>14 A. Roughly 40.</p> <p>15 Q. And that includes all of your initial 12:15:17</p> <p>16 conversations with plaintiffs and work on the report and</p> <p>17 then preparation for the deposition; is that correct?</p> <p>18 A. Through last night, yes, sir.</p> <p>19 Q. Okay. Do you have any assistants who also work</p> <p>20 on this matter? 12:15:33</p> <p>21 A. No, sir.</p> <p>22 Q. So I'm going to introduce Exhibit 1, which I</p> <p>23 believe you said you have a copy of in front of you.</p> <p>24 (Exhibit 1, Expert Rebuttal Report of David</p> <p>25 Nelson, marked for identification electronically 12:15:46</p> <p style="text-align: right;">Page 17</p>

<p>1 by counsel.)</p> <p>2 Q. BY MR. SPILLY: This is a copy of your expert</p> <p>3 report.</p> <p>4 Do you recognize this?</p> <p>5 A. Yes, sir, I do. 12:16:00</p> <p>6 Q. Okay. And this is the report that you filed --</p> <p>7 or that you prepared for this case; is that correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Go to paragraph 11 of your report, which is --</p> <p>10 of Exhibit 1, which is on page 4. Let me know when 12:16:14</p> <p>11 you're there.</p> <p>12 A. I'm here. I'm there.</p> <p>13 Q. Okay. So paragraph 11 says, "I'm compensated at</p> <p>14 the rate of \$200 an hour."</p> <p>15 Did I read that correctly? 12:16:31</p> <p>16 A. Yes, sir.</p> <p>17 Q. Is \$200 an hour your standard rate?</p> <p>18 A. I don't know that I have a standard rate, sir.</p> <p>19 Q. Okay. Is \$200 an hour what you would typically</p> <p>20 charge for your services? 12:16:45</p> <p>21 A. So I only retired from the FBI in December of</p> <p>22 last year. I have not had the occasion to serve as an</p> <p>23 expert witness before, so I don't have any frame of</p> <p>24 reference to make that statement. I will say it does</p> <p>25 seem fair for my time at this point. 12:17:09</p> <p style="text-align: right;">Page 18</p>	<p>1 Morgan & Morgan on a separate matter currently.</p> <p>2 I don't know if that has bearing on your</p> <p>3 question.</p> <p>4 Q. Sure. What is that matter?</p> <p>5 A. It's a matter examining the role of social media 12:18:43</p> <p>6 and its influence on hate speech that leads to active</p> <p>7 shooter events.</p> <p>8 Q. Okay. Who is the attorney from Morgan & Morgan</p> <p>9 that you're working on in that matter?</p> <p>10 A. John -- I'm sorry to interrupt you, sir. 12:19:03</p> <p>11 John Yanchunis.</p> <p>12 Q. Okay. And is that for a litigation?</p> <p>13 A. I don't know if it's for litigation or not. I</p> <p>14 was hired to do research on social media platforms and</p> <p>15 attempt to obtain artifacts, if you will, of subjects who 12:19:26</p> <p>16 engaged in active shooter events and what was available,</p> <p>17 what they put on social media platforms prior to the</p> <p>18 active shooter event.</p> <p>19 Q. What hourly rate are you charging for that</p> <p>20 engagement? 12:19:45</p> <p>21 A. 150 an hour, sir.</p> <p>22 Q. Okay. And how much time have you spent on that</p> <p>23 engagement thus far?</p> <p>24 A. I would have to look at a log file. I would</p> <p>25 estimate between 20 and 30 hours. 12:19:59</p> <p style="text-align: right;">Page 20</p>
<p>1 Q. Okay. Do you have an additional rate that you</p> <p>2 might charge for testifying, say in court or at a</p> <p>3 deposition?</p> <p>4 A. No, sir.</p> <p>5 Q. How much do you anticipate being paid in total 12:17:26</p> <p>6 by the end of the trial?</p> <p>7 MR. MCGEE: Object to the form, speculation.</p> <p>8 THE WITNESS: So I still answer; correct?</p> <p>9 Q. BY MR. SPILLY: Yes, sir.</p> <p>10 MR. MCGEE: You can answer. 12:17:41</p> <p>11 THE WITNESS: Got it.</p> <p>12 If today is the last day that I devote time, it</p> <p>13 will be roughly 50 hours. 50 times 200, by my math, is</p> <p>14 approximately \$10,000.</p> <p>15 Q. BY MR. SPILLY: Okay. Do you have a budget for 12:18:04</p> <p>16 the litigation, like the maximum amount of time that</p> <p>17 you're allowed to spend?</p> <p>18 A. No, sir.</p> <p>19 Q. All right. Have you ever worked for any of</p> <p>20 plaintiffs' law firms in any other capacity? 12:18:15</p> <p>21 A. No, sir.</p> <p>22 Q. Okay. So I am going to introduce --</p> <p>23 A. Sir, for your last question --</p> <p>24 Q. Yes.</p> <p>25 A. -- I am working with another attorney from 12:18:32</p> <p style="text-align: right;">Page 19</p>	<p>1 Q. Okay. And how long -- how much total time do</p> <p>2 you anticipate spending on that project?</p> <p>3 A. I don't -- I don't know, sir.</p> <p>4 MR. MCGEE: Sorry, Mr. Nelson, just, again, give</p> <p>5 me the opportunity to lodge any objections so that the 12:20:15</p> <p>6 court reporter is not taking multiple statements at the</p> <p>7 same time.</p> <p>8 But, again, I would object to the form and</p> <p>9 speculation.</p> <p>10 Q. BY MR. SPILLY: Has Mr. Yanchunis given you any 12:20:28</p> <p>11 indication of how much time that project might take?</p> <p>12 A. No, sir.</p> <p>13 Q. When did you begin working on that project?</p> <p>14 A. Approximately three weeks ago, sir.</p> <p>15 Q. And so that was after you started working on 12:20:44</p> <p>16 this case; is that correct?</p> <p>17 A. That's correct, sir.</p> <p>18 Q. Okay. I am going to introduce what has been</p> <p>19 marked as Exhibit 2.</p> <p>20 (Exhibit 2, Curriculum Vitae, Confidential, 12:21:08</p> <p>21 marked for identification electronically by</p> <p>22 counsel.)</p> <p>23 Q. BY MR. SPILLY: You'll see it in a moment. It</p> <p>24 is Attachment 1 to the expert report that you submitted</p> <p>25 in this case. Will you let me know when you can see 12:21:16</p> <p style="text-align: right;">Page 21</p>

<p>1 that?</p> <p>2 A. I can see it, sir.</p> <p>3 Q. Okay. This is the curriculum vitae that you</p> <p>4 submitted with your report in this case; correct?</p> <p>5 A. That's correct, sir. 12:21:28</p> <p>6 Q. All right. If you go to page 3 of Exhibit 2, do</p> <p>7 you see the header that says, "Education"?</p> <p>8 A. Yes, sir.</p> <p>9 Q. All right. So underneath that it says you have</p> <p>10 a Bachelor's degree in industrial supervision, with 12:21:41</p> <p>11 photography and printing emphasis; is that correct?</p> <p>12 A. Printing technology emphasis, yes, sir.</p> <p>13 Q. Okay. You do not have a Bachelor's degree in</p> <p>14 computer science; correct?</p> <p>15 A. No, sir. 12:21:57</p> <p>16 Q. You do not have a Bachelor's degree in</p> <p>17 electrical engineering; correct?</p> <p>18 A. No, sir.</p> <p>19 Q. You don't have a Bachelor's degree in any</p> <p>20 engineering discipline; is that correct? 12:22:09</p> <p>21 A. Correct, sir.</p> <p>22 Q. You do not have a Master's degree; is that</p> <p>23 correct?</p> <p>24 A. That is correct, sir.</p> <p>25 Q. You also do not have a Ph.D.; correct? 12:22:17</p> <p style="text-align: right;">Page 22</p>	<p>1 July 2004 and January 2006; is that correct?</p> <p>2 A. Correct, sir.</p> <p>3 Q. You also completed an Introduction to Internet</p> <p>4 Investigations 13 years ago in 2009; correct?</p> <p>5 A. Yes, sir. 12:24:13</p> <p>6 Q. And you completed a half-hour long training in</p> <p>7 obtaining and analyzing digital records eight years ago</p> <p>8 in 2014; is that correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. If you go to page 7 of Exhibit 2, if you look at 12:24:28</p> <p>11 the -- do you see the second row up from the bottom with</p> <p>12 the title "Bloodborne Pathogens"?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And under hours, which is the third</p> <p>15 column from the right, about -- for Bloodborne Pathogens 12:24:49</p> <p>16 it says 2.0.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Okay. And then under credits, the entry for</p> <p>20 that row says 2.0.; is that correct? 12:25:01</p> <p>21 A. Yes, sir.</p> <p>22 Q. So my question is: Why do the rest of the rows</p> <p>23 have 0.0 in the credits column?</p> <p>24 A. I don't know the answer to that, sir.</p> <p>25 Q. Okay. Do you know one way or another whether or 12:25:21</p> <p style="text-align: right;">Page 24</p>
<p>1 A. That is correct, sir.</p> <p>2 Q. All right. So if you go to the section of</p> <p>3 Exhibit 2 that starts on page 4 with the header "FBI</p> <p>4 Official Record of Training," let me know when you are</p> <p>5 there. 12:22:41</p> <p>6 A. I'm there, sir.</p> <p>7 MR. MCGEE: And if I could, Mr. Spilly, on</p> <p>8 Exhibit 2, this was provided with the expert report that</p> <p>9 was designated as confidential. Mr. Nelson's home</p> <p>10 address, which I'm not going to read onto the record, is 12:22:56</p> <p>11 included in Exhibit 2, so we'll just be marking that</p> <p>12 confidential, and I would ask that due to the nature of</p> <p>13 Mr. Nelson's prior work with the FBI, that the address</p> <p>14 not be read into the record here so as to mitigate any</p> <p>15 leaking of his address to any other sources. 12:23:19</p> <p>16 THE WITNESS: Thank you, sir.</p> <p>17 Q. BY MR. SPILLY: So your -- Exhibit 2 lists a</p> <p>18 number of different conferences and trainings that you</p> <p>19 attended while you worked at the FBI; is that correct?</p> <p>20 A. Yes, sir, it is. 12:23:42</p> <p>21 Q. You attended the Cyber Criminal Section</p> <p>22 Conference 13 years ago in 2009; is that correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. You completed Cyber 101 and attended a series of</p> <p>25 regional cyber conferences 17 years ago, between 12:23:58</p> <p style="text-align: right;">Page 23</p>	<p>1 not you received credit for participating in these</p> <p>2 conferences and trainings?</p> <p>3 A. Yes, I did, sir.</p> <p>4 Q. Okay. But you don't know one way or another why</p> <p>5 credits show 0 for every row in this table other than 12:25:46</p> <p>6 Bloodborne Pathogens on page 7; is that correct?</p> <p>7 A. Yeah, the credit really isn't used in the FBI.</p> <p>8 I'm not sure where that column even comes from. It's not</p> <p>9 like we're working towards a degree.</p> <p>10 Q. Okay. You are cofounder of Full Nelson 12:26:10</p> <p>11 Investigations; is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Who else works for Full Nelson Investigations?</p> <p>14 A. My wife, Leslie Nelson.</p> <p>15 Q. Okay. And Full Nelson Investigations, LLC, was 12:26:26</p> <p>16 incorporated in 2021; is that correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. What other engagements has Full Nelson</p> <p>19 Investigations worked on since it was incorporated in</p> <p>20 2021? 12:26:43</p> <p>21 A. My wife is working with another investigation</p> <p>22 firm on a separate matter.</p> <p>23 Q. What investigation --</p> <p>24 A. I'm sorry.</p> <p>25 Q. What investigation -- sorry. I didn't mean to 12:26:58</p> <p style="text-align: right;">Page 25</p>

<p>1 talk over you.</p> <p>2 A. No, I'm sorry, sir. I did the same thing.</p> <p>3 Q. What is the investigation firm that Full Nelson</p> <p>4 Investigations is working on -- is working with on</p> <p>5 another matter? 12:27:15</p> <p>6 MR. MCGEE: I'm going to object. I think we've</p> <p>7 been fairly liberal with the questioning here, but</p> <p>8 unless, Mr. Nelson, it's something that you can reveal or</p> <p>9 it's something that you need to speak with counsel about</p> <p>10 it and whether you can reveal it, that his wife is 12:27:35</p> <p>11 conducting something wholly separate from his work here,</p> <p>12 I don't believe it's relevant, but I do leave it to the</p> <p>13 witness on whether it's something that he can or cannot</p> <p>14 discuss.</p> <p>15 THE WITNESS: Sir, respectfully, my wife, I 12:27:53</p> <p>16 believe, signed a non-disclosure agreement with the other</p> <p>17 investigative agency. I'm not working on that matter,</p> <p>18 and I have no knowledge of the matter, other than the</p> <p>19 fact that she is working on the matter, so I don't -- I</p> <p>20 don't believe I can answer that question. 12:28:08</p> <p>21 Q. BY MR. SPILLY: Okay. Are there any other</p> <p>22 matters that Full Nelson Investigations, LLC, has worked</p> <p>23 on since it was incorporated in 2021?</p> <p>24 A. Just the previously mentioned one with attorney</p> <p>25 John Yanchunis. 12:28:27</p> <p style="text-align: right;">Page 26</p>	<p>1 A. So that's a collateral duty, sir. I held that</p> <p>2 position in addition to my investigative duties.</p> <p>3 Q. Okay. So these two overlapped, then, senior</p> <p>4 team leader --</p> <p>5 A. Yes, sir. 12:30:00</p> <p>6 Q. -- and organized crime?</p> <p>7 A. Yes. And I was -- I was the senior team leader</p> <p>8 for the evidence response team also while I was working</p> <p>9 cyber crime matters in El Paso, Texas.</p> <p>10 Q. Okay. So when did you start as a senior team 12:30:12</p> <p>11 leader for the FBI evidence response team?</p> <p>12 A. It would have been -- I don't have the exact</p> <p>13 date. I joined the team as a photographer. Again, it's</p> <p>14 a collateral duty. I became the second in command team</p> <p>15 leader, if you will, a few months later, and then a 12:30:35</p> <p>16 couple of years later, I would guess in 2004, I became</p> <p>17 the senior team leader.</p> <p>18 Q. When did you finish your tenure as a senior team</p> <p>19 leader for the FBI evidence response team?</p> <p>20 A. When I left El Paso, Texas and moved to Tampa, 12:30:56</p> <p>21 Florida.</p> <p>22 Q. Okay. What was the date?</p> <p>23 A. It was September 2006.</p> <p>24 Q. Okay. So then your third position at the FBI</p> <p>25 was cyber crimes investigator, InfraGard coordinator and 12:31:14</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. Okay. And then the one with -- that your wife</p> <p>2 is currently working on; is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. All right. If you go back to Exhibit 2, on</p> <p>5 page 2, look at your professional experience -- 12:28:40</p> <p>6 A. Yes, sir.</p> <p>7 Q. -- starting with -- starting on page 2, the</p> <p>8 entry that says, "Organized Crime/Drug Trafficking</p> <p>9 Investigator."</p> <p>10 Do you see that? 12:28:58</p> <p>11 A. Yes, sir, I do.</p> <p>12 Q. Okay. So your first position at the FBI was</p> <p>13 organized crime/drug trafficking investigator; is that</p> <p>14 correct?</p> <p>15 A. Yes, sir. 12:29:09</p> <p>16 Q. How long did you hold that position for?</p> <p>17 A. Until September 2001.</p> <p>18 Q. Okay. And when did you begin in that position?</p> <p>19 A. In May of 1998.</p> <p>20 Q. Okay. And going up to the next one, do you see 12:29:29</p> <p>21 it says, "Senior Team Leader, FBI Evidence Response</p> <p>22 Team"?</p> <p>23 A. Yes, sir.</p> <p>24 Q. That was your second position at the FBI; is</p> <p>25 that correct? 12:29:45</p> <p style="text-align: right;">Page 27</p>	<p>1 FBI training instructor; is that correct?</p> <p>2 A. Yes, that's correct. I was an agent assigned to</p> <p>3 work cyber crime full-time. The InfraGard coordinator,</p> <p>4 the training instructor, the evidence response team,</p> <p>5 those are all collateral duties in addition to my 12:31:35</p> <p>6 full-time job of being a cyber crime investigator. That</p> <p>7 began in El Paso, Texas prior to me departing for Tampa,</p> <p>8 Florida.</p> <p>9 Q. Okay. What was the date that you began as a</p> <p>10 crime -- cyber crimes investigator? 12:31:50</p> <p>11 A. It was September 2001, right after the 911</p> <p>12 attacks, sir, when the FBI changed its priorities and</p> <p>13 cyber became the number three priority for the FBI.</p> <p>14 Q. Okay. How long did you hold that position for?</p> <p>15 A. A cyber crime investigator? 12:32:05</p> <p>16 Q. Yes, sir.</p> <p>17 A. Up until I became the full-time SWAT team leader</p> <p>18 for the Tampa division, so until -- I believe I would</p> <p>19 have to look at my expert report to get the exact date,</p> <p>20 but it was in 2016, if I'm not mistaken. 12:32:25</p> <p>21 Q. Okay. All right. So how many -- in your role</p> <p>22 as cyber crimes investigator, how many total cyber crime</p> <p>23 cases did you investigate?</p> <p>24 A. Total between El Paso and Tampa, Florida?</p> <p>25 Q. Yes, sir. 12:32:55</p> <p style="text-align: right;">Page 29</p>

<p>1 A. I don't know the total number. Dozens.</p> <p>2 Q. Okay. So more than 20?</p> <p>3 A. Yes.</p> <p>4 Q. Less than 30; is that fair?</p> <p>5 A. No. I would say more than 30. I would say -- I 12:33:13</p> <p>6 mean, less than 100, but more than 30. I'm not sure</p> <p>7 exactly how many. I also -- those are the ones I was</p> <p>8 case agent for, meaning I was the primary investigator.</p> <p>9 I was also co-case agent on an equal number of</p> <p>10 investigations. 12:33:34</p> <p>11 Q. And what -- at a high level, what was the</p> <p>12 subject matter of those investigations?</p> <p>13 A. Anything from innocent images, which is the</p> <p>14 FBI's child pornography cases, internet fraud, some small</p> <p>15 amount of intellectual property rights, which used to 12:33:50</p> <p>16 fall under the cyber program, and computer intrusions,</p> <p>17 which is the primary focus of the cyber program now.</p> <p>18 Q. Okay. By computer intrusions, you mean like</p> <p>19 hacking; is that fair?</p> <p>20 A. Yes. 12:34:12</p> <p>21 Q. Any other subject matter of any investigations</p> <p>22 that you worked on while you were a cyber crime</p> <p>23 investigator at the FBI?</p> <p>24 A. So quite a few. As -- as you are likely aware,</p> <p>25 cyber touches just about every investigative 12:34:34</p> <p style="text-align: right;">Page 30</p>	<p>1 you mean obtained information from?</p> <p>2 Q. Submitted requests to.</p> <p>3 A. I don't believe I submitted any requests to</p> <p>4 Mozilla, sir.</p> <p>5 Q. Okay. Did you obtain information from Mozilla 12:36:22</p> <p>6 in some other way?</p> <p>7 A. Not that I'm aware of, sir.</p> <p>8 Q. Okay. Did you ever work with Hotmail? Or did</p> <p>9 you -- rephrase.</p> <p>10 Did you ever submit any requests to Hotmail? 12:36:32</p> <p>11 A. Through Microsoft, yes, and I believe Hotmail</p> <p>12 was independent prior to Microsoft, so probably both,</p> <p>13 sir.</p> <p>14 Q. Okay. And then you said you also submitted some</p> <p>15 requests to local internet service providers; is that 12:36:53</p> <p>16 right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Which service providers were those?</p> <p>19 A. Road Runner, Bright House Cable. Again, I won't</p> <p>20 have a comprehensive list, but by way of example, 12:37:09</p> <p>21 Spectrum, Verizon. Those are the ones that come to mind.</p> <p>22 Q. Okay. When you're using a web browser, do you</p> <p>23 personally take any steps to hide your device's IP</p> <p>24 address?</p> <p>25 A. Not typically. 12:37:31</p> <p style="text-align: right;">Page 32</p>
<p>1 classification, so I was regularly called to assist on</p> <p>2 other classifications and work the cyber component, for</p> <p>3 example, a kidnapping investigation. I worked the cyber</p> <p>4 crime component of the kidnapping. I did some terrorism</p> <p>5 investigation for the cyber crime component as it related 12:34:55</p> <p>6 to analyzing email headers and log files and other cyber</p> <p>7 crime-related investigative activity.</p> <p>8 Q. Okay. And you worked with technology companies</p> <p>9 when you were in that role as a cyber crimes</p> <p>10 investigator; is that correct? 12:35:18</p> <p>11 A. Yes, sir. Yes, sir.</p> <p>12 Q. Other than Google, did you work with any other</p> <p>13 technology companies when you were submitting and</p> <p>14 receiving requests for user information as a cyber crimes</p> <p>15 investigator at the FBI? 12:35:30</p> <p>16 A. Yes, sir.</p> <p>17 Q. Which ones?</p> <p>18 A. I don't know if I'll be able to list them all,</p> <p>19 but the major ones including Yahoo, local internet</p> <p>20 service providers, Facebook. I don't know if I could 12:35:50</p> <p>21 list them all. I won't remember all of them.</p> <p>22 Q. Did you ever work with Microsoft?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Did you ever work with Mozilla?</p> <p>25 A. I don't believe I worked -- and by worked, do 12:36:08</p> <p style="text-align: right;">Page 31</p>	<p>1 MR. MCGEE: Object --</p> <p>2 THE WITNESS: Sorry.</p> <p>3 MR. MCGEE: You can answer.</p> <p>4 THE WITNESS: Not typically, sir.</p> <p>5 Q. BY MR. SPILLY: Why not? 12:37:39</p> <p>6 A. I'm not sure why that question is relevant, sir.</p> <p>7 Q. Yeah, so I'm just asking: You said you don't --</p> <p>8 you typically don't take any steps to hide your device's</p> <p>9 IP address, and I'm wondering why you do not do that?</p> <p>10 A. I don't find it necessary, sir. 12:38:05</p> <p>11 Q. Why not?</p> <p>12 A. Again, I'm not sure how this is relevant, sir.</p> <p>13 Q. Okay. Well, I'm just here to ask pretty much</p> <p>14 any questions that I want, and that -- and then you're</p> <p>15 here to answer the questions, so I think, like, you know, 12:38:29</p> <p>16 going back and forth about the relevance of particular</p> <p>17 inquiries is probably not going to be very productive.</p> <p>18 So I'm just asking -- you know, you said you</p> <p>19 don't use -- you don't hide the IP address on your device</p> <p>20 when you're using it. I'm just asking why do you not 12:38:46</p> <p>21 think that's necessary?</p> <p>22 MR. MCGEE: Object to the form.</p> <p>23 You can answer, Mr. Nelson.</p> <p>24 THE WITNESS: Typically, I don't. I don't find</p> <p>25 myself doing things on the internet that need to be 12:38:59</p> <p style="text-align: right;">Page 33</p>

<p>1 secret.</p> <p>2 Q. BY MR. SPILLY: Okay. By things that need to be</p> <p>3 secret, you mean, for example, cyber crimes?</p> <p>4 A. That would be one example, sir.</p> <p>5 Q. Okay. All right. So we'll go back to 12:39:19</p> <p>6 Exhibit 1, and if you go to page 4, paragraph 9, let me</p> <p>7 know when you're there.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. So paragraph 9 says, "Counsel for the</p> <p>10 Plaintiffs in this action retained me to review and 12:39:40</p> <p>11 provide opinions in response to the Expert Report of</p> <p>12 Georgios Zervas, submitted by Google on April 15th,</p> <p>13 2022."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes, sir. 12:39:56</p> <p>16 Q. Does this accurately -- does paragraph 9 of</p> <p>17 Exhibit 1 accurately reflect the full scope of your</p> <p>18 assignment in this case?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So you were not retained to do anything else for 12:40:08</p> <p>21 this case; is that correct?</p> <p>22 A. No, sir. That is correct, sir.</p> <p>23 Q. Okay. And by that I mean you were not asked to</p> <p>24 respond to any other experts' opinions in this case; is</p> <p>25 that correct? 12:40:18</p> <p style="text-align: right;">Page 34</p>	<p>1 paragraphs 6, 45, 59 through 61, 70, 80, 82 and 83; is</p> <p>2 that correct?</p> <p>3 A. Yes, sir.</p> <p>4 MR. MCGEE: Object to the form. I think you</p> <p>5 said 6, Mr. Spilly. I don't see that on the footnote. 12:41:57</p> <p>6 MR. SPILLY: I'll start it again.</p> <p>7 Q. Do you see on the next page that there's</p> <p>8 footnote 4 to paragraph 17 of Exhibit 1?</p> <p>9 A. I do see that, sir.</p> <p>10 Q. And that has paragraph 6 cited; is that correct? 12:42:17</p> <p>11 A. It does, sir.</p> <p>12 Q. Okay. And so you do not identify any other</p> <p>13 paragraphs from Professor Zervas' report in paragraph 17</p> <p>14 of Exhibit 1; is that correct?</p> <p>15 MR. MCGEE: Object to the form. 12:42:37</p> <p>16 THE WITNESS: That's correct, sir.</p> <p>17 Q. BY MR. SPILLY: You also do not identify any</p> <p>18 other paragraphs from Professor Zervas' report in the</p> <p>19 same footnotes to paragraph 17 of Exhibit 1; is that</p> <p>20 correct? 12:42:52</p> <p>21 MR. MCGEE: Object to the form.</p> <p>22 THE WITNESS: That's correct.</p> <p>23 Sorry, sir.</p> <p>24 Q. BY MR. SPILLY: Okay. If you go to paragraph 31</p> <p>25 of Exhibit 1, which is page 7. Let me know when you're 12:43:01</p> <p style="text-align: right;">Page 36</p>
<p>1 A. No, sir.</p> <p>2 Q. Okay. So if you go down one paragraph,</p> <p>3 paragraph 10 of Exhibit 1 says, "I reviewed the Zervas</p> <p>4 Report and all of the materials appended to it, and I'm</p> <p>5 offering rebuttal opinions in connection with Professor 12:40:37</p> <p>6 Zervas' opinions and assertions regarding private</p> <p>7 browsing functionality (Opinion 1 and Section IV of his</p> <p>8 report)."</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes, sir. 12:40:47</p> <p>11 Q. You were not asked to respond to any other</p> <p>12 opinions from Professor Zervas' report; is that correct?</p> <p>13 A. That is correct, sir.</p> <p>14 Q. All right. So if we go to paragraph 17 of</p> <p>15 Exhibit 1. 12:41:08</p> <p>16 A. Yes, sir, I'm there.</p> <p>17 Q. All right. Do you see there's a footnote 2 and</p> <p>18 then a footnote 3 that identifies -- or sorry. I'll</p> <p>19 start over.</p> <p>20 Do you see that paragraph 17 of Exhibit 1 has 12:41:18</p> <p>21 footnote 2 and footnote 3 that cites specific paragraphs</p> <p>22 from Professor Zervas' report that you're responding to;</p> <p>23 is that right?</p> <p>24 A. I do see that, sir, yes.</p> <p>25 Q. Okay. And so those footnotes identify 12:41:35</p> <p style="text-align: right;">Page 35</p>	<p>1 there.</p> <p>2 A. I'm there, sir.</p> <p>3 Q. Okay. So paragraph 31 -- in paragraph 31 of</p> <p>4 Exhibit 1 you include footnotes that cite specific</p> <p>5 paragraphs from Professor Zervas' report that you're 12:43:17</p> <p>6 responding to; is that correct?</p> <p>7 A. It is, sir.</p> <p>8 Q. Okay. And those are Footnotes 13 through 16; is</p> <p>9 that right?</p> <p>10 A. Yes, sir. 12:43:29</p> <p>11 Q. Footnotes 13 to 16 to paragraph 31 of Exhibit 1</p> <p>12 cite paragraphs 6, 80, 82, 83 and 119 of Professor</p> <p>13 Zervas' report; is that correct?</p> <p>14 MR. MCGEE: Object to the form.</p> <p>15 THE WITNESS: Yes, sir. 12:43:52</p> <p>16 Q. BY MR. SPILLY: You do not identify any other</p> <p>17 paragraphs from Professor Zervas' report in paragraphs --</p> <p>18 or in footnotes 13 to 16 to paragraph 31 of Exhibit 1; is</p> <p>19 that correct?</p> <p>20 MR. MCGEE: Object to the form. 12:44:06</p> <p>21 THE WITNESS: No, sir.</p> <p>22 Q. BY MR. SPILLY: All right. If you go to</p> <p>23 paragraph 12, do you see it says -- the first sentence of</p> <p>24 paragraph 12 says -- of Exhibit 1 says, "In preparing</p> <p>25 this rebuttal report, I've relied upon the documents 12:44:28</p> <p style="text-align: right;">Page 37</p>

<p>1 identified herein, which are listed in Appendix 1"; is</p> <p>2 that correct? Did I read that correctly?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Appendix 1 to your report consists of</p> <p>5 spreadsheets containing exports of data from Google's 12:44:44</p> <p>6 transparency report for global requests for user</p> <p>7 information; is that correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Appendix 1 of your report does not include any</p> <p>10 additional documents other than those spreadsheets 12:44:57</p> <p>11 containing exports of data from Google's transparency</p> <p>12 report; is that correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And then the second sentence of paragraph</p> <p>15 12 says, "Because of the discrete nature of my engagement 12:45:13</p> <p>16 for this case, I did not request and I was not provided</p> <p>17 access to documents that Google produced in discovery."</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And so you have no opinion on the content 12:45:29</p> <p>21 or meaning of any documents produced by Google in</p> <p>22 discovery; is that correct?</p> <p>23 A. Could you repeat that question, sir?</p> <p>24 Q. Yes.</p> <p>25 So you have not reviewed any documents produced 12:45:48</p> <p style="text-align: right;">Page 38</p>	<p>1 A. Yes, sir.</p> <p>2 Q. -- those -- paragraphs 3 through 8 of Exhibit 1</p> <p>3 describe your background; correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. These paragraphs do not contain opinions that 12:47:23</p> <p>6 you're offering in this case; is that correct?</p> <p>7 A. That's correct, sir.</p> <p>8 Q. All right. And paragraphs -- if you go down to</p> <p>9 9 through 15. Let me know when you're there. It's on</p> <p>10 the next page. 12:47:37</p> <p>11 A. I'm there, sir.</p> <p>12 Q. Okay. Paragraphs 9 through 15 describe the</p> <p>13 scope of your assignment and the materials you relied on</p> <p>14 to form your opinions; is that correct?</p> <p>15 A. Yes, sir. 12:47:51</p> <p>16 Q. They do not contain opinions that you're</p> <p>17 offering as an expert in this case; is that correct?</p> <p>18 A. Correct, sir.</p> <p>19 Q. If you go down do paragraph 16, paragraph 16</p> <p>20 says, "Having reviewed Professor Zervas' report, it is my 12:48:12</p> <p>21 opinion that Professor Zervas' assertions regarding</p> <p>22 private browsing mode functionality are incomplete and</p> <p>23 misleading, with Professor Zervas failing to address how</p> <p>24 private browsing activity associated with IP addresses</p> <p>25 and other identifying information is saved, persists 12:48:29</p> <p style="text-align: right;">Page 40</p>
<p>1 by Google in discovery in this case; is that correct?</p> <p>2 A. That is correct, sir.</p> <p>3 Q. And thus you have no opinion on the content or</p> <p>4 meaning of any documents produced by Google in discovery;</p> <p>5 is that correct? 12:46:03</p> <p>6 A. Having not read them, that is correct, sir.</p> <p>7 Q. All right. So going to exhibit -- so staying on</p> <p>8 Exhibit 1, going to paragraph 2, can you read paragraph 2</p> <p>9 out loud for me, please?</p> <p>10 A. "As described below, I am offering the following 12:46:25</p> <p>11 opinion: Professor Zervas' opinions regarding the</p> <p>12 functionality of private browsing are incomplete and</p> <p>13 misleading because he failed to address how Google saves,</p> <p>14 collects, and routinely produces data to third parties,</p> <p>15 including Google producing (for a fee) data in response 12:46:42</p> <p>16 to law enforcement requests tied to IP addresses, where</p> <p>17 the data produced by Google would include private</p> <p>18 browsing data that in my experience can be linked to</p> <p>19 specific individuals and devices."</p> <p>20 Q. Okay. Paragraph 2 of Exhibit 1 identifies an 12:46:57</p> <p>21 opinion that you are providing in this case; is that</p> <p>22 correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. All right. If I look below those paragraphs 3</p> <p>25 through 8 -- 12:47:11</p> <p style="text-align: right;">Page 39</p>	<p>1 after a private browser is closed, and is retained and</p> <p>2 made available by Google to third parties, including law</p> <p>3 enforcement."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes, sir. 12:48:41</p> <p>6 Q. Paragraph 16 is another opinion you're providing</p> <p>7 in this case; is that correct?</p> <p>8 MR. MCGEE: Object to the form.</p> <p>9 THE WITNESS: Yes, sir.</p> <p>10 Q. BY MR. SPILLY: And underneath that, looking at 12:48:55</p> <p>11 paragraph 17, can you read paragraph 17 out loud for me?</p> <p>12 A. "Throughout his report, Professor Zervas</p> <p>13 presents private browsing as modes that 'work as</p> <p>14 described by Google' where private browsing information</p> <p>15 'is not saved' and not available after the private 12:49:12</p> <p>16 browsing session ends, footnote 2. For example,</p> <p>17 Professor Zervas includes one section titled 'Browsing</p> <p>18 History from a Private Browsing Session Is Not Saved.'</p> <p>19 Professor Zervas bases this on an assessment of whether</p> <p>20 specific data was saved and maintained on specific 12:49:32</p> <p>21 devices and also discusses whether cookies values are</p> <p>22 being shared between private browsing and other browsing</p> <p>23 sessions," and "other browsing sessions" is in quotes.</p> <p>24 Q. Okay. So paragraph 17 is summarizing Professor</p> <p>25 Zervas' opinions; is that correct? 12:49:59</p> <p style="text-align: right;">Page 41</p>

<p>1 MR. MCGEE: Object to the form.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: Yeah, I would say it's a summary</p> <p>4 of his opinions, sir.</p> <p>5 Q. BY MR. SPILLY: Paragraph 17 is not an opinion 12:50:09</p> <p>6 that you are providing in this case; is that correct?</p> <p>7 MR. MCGEE: Object to the form.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: No. I'm restating one of his</p> <p>10 opinions, sir. 12:50:30</p> <p>11 Q. BY MR. SPILLY: Okay. So going down, continuing</p> <p>12 with the same exercise, paragraph 18 is an opinion you're</p> <p>13 providing in this case; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And below that, paragraph 19, do you see that? 12:50:46</p> <p>16 A. I do see it, sir.</p> <p>17 Q. Paragraph 19 is also an opinion you're providing</p> <p>18 in this case; is that correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And then paragraphs 20 through 23 12:51:06</p> <p>21 underneath describe your experience at the FBI; is that</p> <p>22 correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Paragraphs 20 through 23 of Exhibit 1 do not</p> <p>25 contain opinions that you're providing in this case; is 12:51:26</p> <p style="text-align: right;">Page 42</p>	<p>1 A. Yes, sir, I've read all three paragraphs.</p> <p>2 Q. Okay. Paragraphs 25 through 27 of Exhibit 1</p> <p>3 describe your experience submitting administrative</p> <p>4 subpoenas to Google; is that correct?</p> <p>5 A. Yes, sir. 12:53:06</p> <p>6 Q. All right. So paragraphs 25 through 27 of</p> <p>7 Exhibit 1 do not state your expert opinion; is that</p> <p>8 correct?</p> <p>9 MR. MCGEE: Object to the form.</p> <p>10 You can answer. 12:53:19</p> <p>11 THE WITNESS: Correct, sir.</p> <p>12 Q. BY MR. SPILLY: Okay. Moving down to paragraph</p> <p>13 31. So if you can take a moment to review that one.</p> <p>14 A. Yes, sir, I've reviewed it.</p> <p>15 Q. Okay. Paragraph 31 of Exhibit 1 summarizes 12:53:47</p> <p>16 Professor Zervas' opinion; is that correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And paragraph 31 of Exhibit 1 does not contain</p> <p>19 your own opinions responding to Professor Zervas; is that</p> <p>20 correct? 12:54:05</p> <p>21 MR. MCGEE: Object to the form.</p> <p>22 You can answer.</p> <p>23 THE WITNESS: Correct, sir.</p> <p>24 Q. BY MR. SPILLY: All right. Staying on</p> <p>25 Exhibit 1, looking at paragraph 32, so paragraph 32 of 12:54:15</p> <p style="text-align: right;">Page 44</p>
<p>1 that correct?</p> <p>2 MR. MCGEE: Object to the form.</p> <p>3 You can answer.</p> <p>4 THE WITNESS: Correct, sir.</p> <p>5 Q. BY MR. SPILLY: Okay. Now, looking at paragraph 12:51:38</p> <p>6 24.</p> <p>7 A. Yes, sir, I'm there.</p> <p>8 Q. Let me know when you've had a chance to review</p> <p>9 that one.</p> <p>10 A. Yes, sir, I've reviewed that paragraph. 12:51:59</p> <p>11 Q. Paragraph 24 describes the legal requirements</p> <p>12 for obtaining administrative subpoenas, grand jury</p> <p>13 subpoenas and warrants; is that correct?</p> <p>14 A. Not necessarily the legal requirements, sir.</p> <p>15 It's more a summary of what they are, but, yes, sir. 12:52:14</p> <p>16 Q. Okay. And you are not presenting paragraph 24</p> <p>17 of Exhibit 1 as your opinion in this case; is that</p> <p>18 correct?</p> <p>19 A. No, sir.</p> <p>20 MR. MCGEE: Object to the form. 12:52:27</p> <p>21 You can answer.</p> <p>22 Q. BY MR. SPILLY: Paragraphs 25 through 27, can</p> <p>23 you take a moment to take a look at those? And I bet</p> <p>24 while you're doing that you'll know what my next question</p> <p>25 is going to be. 12:52:53</p> <p style="text-align: right;">Page 43</p>	<p>1 Exhibit 1 says, "Based on my education, training, and</p> <p>2 experience at the FBI, in particular my interactions with</p> <p>3 Google in that capacity, Professor Zervas' position</p> <p>4 regarding linkability runs contrary to matters I</p> <p>5 personally observed during my career with the FBI." 12:54:36</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Paragraph 32 of Exhibit 1 is an opinion you're</p> <p>9 providing in this case; is that correct?</p> <p>10 A. Yes, sir. 12:54:49</p> <p>11 Q. Okay. And then paragraph 33 below that, will</p> <p>12 you take a moment to review that one?</p> <p>13 MR. MCGEE: And, Mr. Spilly, just when we get to</p> <p>14 a breaking point, I think we've been going about an hour,</p> <p>15 so I'd appreciate a chance to refill some water. 12:55:11</p> <p>16 MR. SPILLY: Okay. Cool.</p> <p>17 THE WITNESS: I've read it, sir.</p> <p>18 Q. BY MR. SPILLY: All right. And paragraph 33</p> <p>19 describes your memory of your experiences with Google's</p> <p>20 production of information in response to law enforcement 12:55:30</p> <p>21 requests; is that correct?</p> <p>22 A. It does, sir.</p> <p>23 Q. Paragraph 33 does not contain an opinion that</p> <p>24 you're offering as an expert in this case; is that</p> <p>25 correct? 12:55:44</p> <p style="text-align: right;">Page 45</p>

<p>1 MR. MCGEE: Object to the form.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: No, sir. No opinion.</p> <p>4 Q. BY MR. SPILLY: Okay. So take a look at the</p> <p>5 next page, paragraphs 34 through 37, and I am guessing 12:55:58</p> <p>6 that you know what I'm going to ask, and want to give</p> <p>7 Mr. McGee some water, so I'll start with paragraph 34</p> <p>8 describes your recollection of Google's productions in</p> <p>9 response to requests from the FBI; is that correct?</p> <p>10 A. Yes, sir. 12:56:37</p> <p>11 Q. Paragraph 34 of Exhibit 1 does not contain an</p> <p>12 expert opinion that you're offering in this case; is that</p> <p>13 correct?</p> <p>14 MR. MCGEE: Object to the form.</p> <p>15 You can answer. 12:56:47</p> <p>16 THE WITNESS: No, sir, it does not.</p> <p>17 Q. BY MR. SPILLY: All right. Paragraph 35</p> <p>18 describes your recollection of a specific cyberstalking</p> <p>19 investigation you participating in; is that correct?</p> <p>20 A. Yes, sir. 12:57:05</p> <p>21 Q. Paragraph 35 of Exhibit 1 does not contain an</p> <p>22 opinion that you're offering as an expert in this case;</p> <p>23 is that correct?</p> <p>24 MR. MCGEE: Object to the form.</p> <p>25 You can answer. 12:57:16</p> <p style="text-align: right;">Page 46</p>	<p>1 suspects would include information provided by Google,</p> <p>2 but also other case information, so it wouldn't be</p> <p>3 strictly limited to the Google information.</p> <p>4 Q. Okay. What would be some other information that</p> <p>5 you would -- 12:58:49</p> <p>6 A. Followup investigation -- I'm sorry. I didn't</p> <p>7 give you a chance, Mr. McGee.</p> <p>8 MR. MCGEE: No, that's fine.</p> <p>9 THE WITNESS: Followup investigation, results of</p> <p>10 search warrants, other evidence related to the case. 12:58:59</p> <p>11 Q. BY MR. SPILLY: Okay. Other evidence related to</p> <p>12 the case that you obtained from sources other than</p> <p>13 Google; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And paragraph 37 of Exhibit 1 does not contain 12:59:18</p> <p>16 an expert opinion that you're offering in this case; is</p> <p>17 that correct?</p> <p>18 MR. MCGEE: Object to the form.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: No, it's not an opinion. It's a 12:59:34</p> <p>21 statement of fact as I recalled it.</p> <p>22 MR. SPILLY: Okay. I think we can take -- how</p> <p>23 long do you need, Ryan? About ten minutes, Ryan?</p> <p>24 MR. MCGEE: That would be great. Thank you.</p> <p>25 MR. SPILLY: Okay. We can go off the record for 12:59:53</p> <p style="text-align: right;">Page 48</p>
<p>1 THE WITNESS: No, sir, it does not.</p> <p>2 Q. BY MR. SPILLY: Paragraph 36 provides additional</p> <p>3 summary of your recollection of Google's productions in</p> <p>4 response to requests from the FBI; is that correct?</p> <p>5 A. Yes, sir. 12:57:39</p> <p>6 Q. Paragraph 36 of Exhibit 1 does not contain any</p> <p>7 opinion that you are offering in this case; is that</p> <p>8 correct?</p> <p>9 MR. MCGEE: Object to the form.</p> <p>10 You can answer. 12:57:51</p> <p>11 THE WITNESS: No, sir.</p> <p>12 Q. BY MR. SPILLY: All right. And then paragraph</p> <p>13 37 says, "When we interviewed suspects with information</p> <p>14 provided by Google, some suspects would state that the</p> <p>15 responsive information was from private browsing 12:58:04</p> <p>16 activity."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Paragraph 37 describes your recollection of</p> <p>20 interviews of suspects whose information was provided by 12:58:15</p> <p>21 Google in response to requests from the FBI; is that</p> <p>22 correct?</p> <p>23 A. Some of the information, yes.</p> <p>24 Q. What do you mean by that?</p> <p>25 A. I mean the interviews we conducted with the 12:58:29</p> <p style="text-align: right;">Page 47</p>	<p>1 ten minutes then.</p> <p>2 THE VIDEOGRAPHER: Going off the record at</p> <p>3 1 o'clock p.m.</p> <p>4 (Recess.)</p> <p>5 THE VIDEOGRAPHER: We are back on the record at 13:12:11</p> <p>6 1:12 p.m.</p> <p>7 Q. BY MR. SPILLY: Welcome back, Mr. Nelson.</p> <p>8 A. Thank you, sir.</p> <p>9 Q. Did you speak with your attorneys during the</p> <p>10 break? 13:12:24</p> <p>11 A. Yes, I did, sir.</p> <p>12 Q. What did you talk to them about?</p> <p>13 A. Just how the deposition was going, their</p> <p>14 thoughts on your line of questioning and basically to</p> <p>15 continue as planned. 13:12:33</p> <p>16 Q. Okay. If you'd go to Exhibit 1. Looking at</p> <p>17 paragraph 2, let me know when you're there.</p> <p>18 A. I'm there.</p> <p>19 Q. Okay. In paragraph 2 of Exhibit 1 you say that</p> <p>20 Professor Zervas "failed to address how Google saves, 13:12:58</p> <p>21 collects, and routinely produces data to third parties,</p> <p>22 including law enforcement."</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Aside from the FBI, what third parties are you 13:13:13</p> <p style="text-align: right;">Page 49</p>

<p>1 referring to in paragraph 2 of Exhibit 1?</p> <p>2 A. Other government entities, sir.</p> <p>3 Q. Okay. Which government entities?</p> <p>4 A. I don't know. I know that they provide</p> <p>5 information to other government entities besides law 13:13:34</p> <p>6 enforcement. I don't know exactly which ones.</p> <p>7 Q. Okay. Do you think it was wrong for Google to</p> <p>8 provide the FBI with information that the FBI requested</p> <p>9 in investigating criminal conduct?</p> <p>10 MR. MCGEE: Object to the form. 13:14:05</p> <p>11 You can answer.</p> <p>12 THE WITNESS: It's not my place to say whether</p> <p>13 it was right or wrong. That's not why I was retained by</p> <p>14 Morgan & Morgan, sir.</p> <p>15 Q. BY MR. SPILLY: Okay. But you personally -- 13:14:19</p> <p>16 okay. Hold on. Start over.</p> <p>17 Google's production of information in response</p> <p>18 to requests from the FBI helped you solve crimes; is that</p> <p>19 fair?</p> <p>20 A. That is fair, sir. 13:14:34</p> <p>21 Q. Okay. And if Google had not produced</p> <p>22 information in response to the FBI's requests, it would</p> <p>23 have been more difficult to solve those crimes; is that</p> <p>24 correct?</p> <p>25 MR. MCGEE: Object to the form. 13:14:52</p> <p style="text-align: right;">Page 50</p>	<p>1 Q. BY MR. SPILLY: I think you said that other</p> <p>2 government agencies submit requests to Google for</p> <p>3 information; is that correct?</p> <p>4 A. No. I said that Google shares information with</p> <p>5 other government agencies. 13:16:18</p> <p>6 Q. Okay. And how do you know that?</p> <p>7 A. I know it from hearing from other agents discuss</p> <p>8 it at the FBI.</p> <p>9 Q. Okay. You don't have first-hand knowledge of</p> <p>10 that; is that correct? 13:16:42</p> <p>11 A. I'm going to ask you to repeat that question,</p> <p>12 sir.</p> <p>13 Q. Sure.</p> <p>14 So you don't have first-hand knowledge of Google</p> <p>15 sharing information with other government agencies other 13:16:58</p> <p>16 than the FBI; is that correct?</p> <p>17 MR. MCGEE: Object to the form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: That is correct.</p> <p>20 Q. BY MR. SPILLY: So you said that Google 13:17:13</p> <p>21 providing information in response to requests from the</p> <p>22 FBI helped you solve crimes; is that right?</p> <p>23 A. That's correct, sir.</p> <p>24 Q. And potentially, without Google providing</p> <p>25 information to the FBI, some of those crimes might not 13:17:26</p> <p style="text-align: right;">Page 52</p>
<p>1 You can answer.</p> <p>2 THE WITNESS: Yes, sir, that's correct.</p> <p>3 Q. BY MR. SPILLY: Okay. Do you think that Google</p> <p>4 investigating law enforcement -- do you think that Google</p> <p>5 assisting law enforcement with investigations is a 13:15:04</p> <p>6 problem?</p> <p>7 MR. MCGEE: Object to the form.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: Sir, if you're asking my personal</p> <p>10 opinion, that might differ than the opinion I've 13:15:17</p> <p>11 presented for in my expert report.</p> <p>12 Q. BY MR. SPILLY: I don't think you say this in</p> <p>13 your expert report, so I'm just looking for your opinion.</p> <p>14 Do you think that Google assisting law</p> <p>15 enforcement with investigations is a problem? 13:15:34</p> <p>16 MR. MCGEE: Object to the form.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: As a private citizen, I do think</p> <p>19 it's a problem. Did it help the FBI and me as an FBI</p> <p>20 agent in my investigations, yes. 13:15:48</p> <p>21 Q. BY MR. SPILLY: Okay. Do you think Google</p> <p>22 should stop cooperating with the FBI?</p> <p>23 MR. MCGEE: Object to the form.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: No. 13:16:02</p> <p style="text-align: right;">Page 51</p>	<p>1 have been solved; is that fair?</p> <p>2 A. It's a hypothetical, but I would agree with that</p> <p>3 statement.</p> <p>4 Q. Okay. How do you know that the information the</p> <p>5 FBI received in response to the requests referenced in 13:17:45</p> <p>6 your report that you claim is actually saved by Google</p> <p>7 and capable of being linked to specific users and devices</p> <p>8 was private browsing information?</p> <p>9 A. Because when I interviewed suspects or subjects,</p> <p>10 they told me it was. They were surprised that we had the 13:18:14</p> <p>11 information, because they were using private browsing</p> <p>12 mode whether they conducted those activities.</p> <p>13 Q. And there's no other source of information that</p> <p>14 you could review or consult to determine that that</p> <p>15 information included private browsing information; is 13:18:38</p> <p>16 that correct?</p> <p>17 MR. MCGEE: Object to the form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: That's incorrect, sir.</p> <p>20 Q. BY MR. SPILLY: Okay. You said: When I 13:18:54</p> <p>21 interviewed suspects, as I asked, "How do you know that</p> <p>22 information the FBI received was private browsing</p> <p>23 information," you said, I interviewed suspects, and they</p> <p>24 told me; is that correct?</p> <p>25 A. Yes, sir, that's one of the reasons. 13:19:08</p> <p style="text-align: right;">Page 53</p>

<p>1 Q. Okay. What are the other reasons?</p> <p>2 A. In material produced by Google, there was a</p> <p>3 column that had the header for the Google user account.</p> <p>4 There were times when I reviewed data produced by Google</p> <p>5 where there was a Google user account associated with the 13:19:34</p> <p>6 data and where there was nothing in that field. To me,</p> <p>7 that is a likely indicator that it was private browsing</p> <p>8 mode.</p> <p>9 Q. Okay. You're saying the header -- sorry. What</p> <p>10 header for the Google user account are you describing 13:20:05</p> <p>11 there?</p> <p>12 MR. MCGEE: Object to the form.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: So in the spreadsheets, there</p> <p>15 would be a column, and in the column header it would have 13:20:15</p> <p>16 an indicator for a Google user account, and for the</p> <p>17 entries on the data provided by Google, there were times</p> <p>18 where that had a Google user account listed for the entry</p> <p>19 and times where it did not have a Google user account</p> <p>20 listed for the entry. 13:20:37</p> <p>21 Q. BY MR. SPILLY: Okay. Wouldn't it be possible</p> <p>22 that they just hadn't signed in to their Google account?</p> <p>23 A. Possible.</p> <p>24 Q. Okay. So you can't be certain that the absence</p> <p>25 of a Google account field means that they were in private 13:20:54</p> <p style="text-align: right;">Page 54</p>	<p>1 Q. BY MR. SPILLY: And was it in Safari private</p> <p>2 browsing mode?</p> <p>3 MR. MCGEE: Object to the form, speculation.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: I don't know, sir. 13:22:40</p> <p>6 Q. BY MR. SPILLY: Okay. You have no special</p> <p>7 expertise in what the absence of a Google account listed</p> <p>8 on the spreadsheets that you reference means; is that</p> <p>9 correct?</p> <p>10 MR. MCGEE: Object to the form. 13:22:53</p> <p>11 You can answer.</p> <p>12 THE WITNESS: No, sir.</p> <p>13 Q. BY MR. SPILLY: Okay. And on paragraph -- okay.</p> <p>14 So staying on Exhibit 1, paragraph 37.</p> <p>15 A. Yes, sir. 13:23:23</p> <p>16 Q. Sorry. Just to run that back one more time.</p> <p>17 Is it correct that you have no special expertise</p> <p>18 in what the absence of a Google account listed on the</p> <p>19 spreadsheets that you referenced means? Is that correct?</p> <p>20 MR. MCGEE: Object to the form. 13:23:47</p> <p>21 You can answer.</p> <p>22 THE WITNESS: I guess I don't know what you mean</p> <p>23 by "special expertise," sir.</p> <p>24 Q. BY MR. SPILLY: So you said there's a Google</p> <p>25 account field in some spreadsheets that Google has 13:24:02</p> <p style="text-align: right;">Page 56</p>
<p>1 browsing; is that correct?</p> <p>2 MR. MCGEE: Object to the form.</p> <p>3 You can answer.</p> <p>4 THE WITNESS: That's correct. I said it was an</p> <p>5 indicator that it was likely. 13:21:07</p> <p>6 Q. BY MR. SPILLY: Okay. But you don't know that</p> <p>7 for sure; is that fair?</p> <p>8 A. Correct, sir.</p> <p>9 Q. Okay. So you reference some spreadsheets that</p> <p>10 Google will produce in response to some requests for 13:21:41</p> <p>11 information, so was the information in those spreadsheets</p> <p>12 from Incognito mode on Chrome?</p> <p>13 MR. MCGEE: Object to the form, speculation.</p> <p>14 You can answer.</p> <p>15 THE WITNESS: I don't know, sir. 13:22:03</p> <p>16 Q. BY MR. SPILLY: Was it from Microsoft Edge in</p> <p>17 private mode?</p> <p>18 MR. MCGEE: Object to the form, speculation.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: I don't know, sir. 13:22:15</p> <p>21 Q. BY MR. SPILLY: Okay. Was it in Firefox private</p> <p>22 browsing mode?</p> <p>23 MR. MCGEE: Object to the form, speculation.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I don't know, sir. 13:22:32</p> <p style="text-align: right;">Page 55</p>	<p>1 produced; is that correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And you don't know one way or another whether or</p> <p>4 not that field being empty means that a user was signed</p> <p>5 out of a Google account when they were browsing? 13:24:22</p> <p>6 A. Correct, sir.</p> <p>7 Q. Okay. You don't know one way or another whether</p> <p>8 or not that -- the absence of that field means that a</p> <p>9 user was using private browsing mode; is that correct?</p> <p>10 MR. MCGEE: Object to the form. 13:24:42</p> <p>11 You can answer.</p> <p>12 THE WITNESS: Yeah, I think I've already</p> <p>13 answered that question, sir.</p> <p>14 Q. BY MR. SPILLY: Okay. And so you are saying</p> <p>15 that you believe that the absence -- sorry. Let me start 13:25:00</p> <p>16 over.</p> <p>17 The absence of that account -- or of that field</p> <p>18 in the spreadsheets that you referenced could be an</p> <p>19 indicator that someone is just not signed in to a Google</p> <p>20 account; is that correct? 13:25:20</p> <p>21 A. It could be that. It also, just as easily,</p> <p>22 could be that they were in Incognito mode. I think it's</p> <p>23 an indicator, potentially, of both.</p> <p>24 Q. Okay. And you have no special expertise on</p> <p>25 which of those two options the absence of that field 13:25:45</p> <p style="text-align: right;">Page 57</p>

<p>1 might be an indicator for; is that correct?</p> <p>2 MR. MCGEE: Object to the form.</p> <p>3 You can answer.</p> <p>4 THE WITNESS: I don't. I suspect that there is</p> <p>5 a way to tell but Google never shared that with us. 13:26:03</p> <p>6 Q. BY MR. SPILLY: Okay. So other than a witness</p> <p>7 telling you in an interview that they were using private</p> <p>8 browsing mode on their browser, you have no way of</p> <p>9 knowing for certain whether information produced by</p> <p>10 Google was private browsing information; is that correct? 13:26:30</p> <p>11 MR. MCGEE: Object to the form.</p> <p>12 You can answer, Mr. Nelson.</p> <p>13 THE WITNESS: So no personal knowledge, but I --</p> <p>14 I would say in Professor Zervas' own report, and I can</p> <p>15 give you the paragraph number if needed, he discusses 13:26:47</p> <p>16 that in Incognito mode, it does not prevent a website</p> <p>17 such as Google from knowing the IP address and following</p> <p>18 all the locations within that website. In</p> <p>19 Professor Zervas' own report.</p> <p>20 Q. BY MR. SPILLY: Okay. When witnesses told you 13:27:14</p> <p>21 they were using private browsing mode, did you ever</p> <p>22 confirm those witnesses' statements?</p> <p>23 A. No, sir. I don't know that there would have</p> <p>24 been a way to do so.</p> <p>25 Q. Okay. So the only basis for your opinion that 13:27:28</p> <p style="text-align: right;">Page 58</p>	<p>1 Q. And when witnesses told you they were in private</p> <p>2 browsing mode on their browser, how did that come up in</p> <p>3 the context of these interviews?</p> <p>4 A. They volunteered the information, sir. All</p> <p>5 three of them. 13:29:25</p> <p>6 Q. Okay. And what did they say?</p> <p>7 A. All three of them were slightly different, but</p> <p>8 all three of them were along the lines of: "I'm</p> <p>9 surprised you have that information because I was in</p> <p>10 private browsing mode and I thought it was secret." 13:29:41</p> <p>11 Q. Okay. In the information that was produced</p> <p>12 related to those three interviewees, was the Google</p> <p>13 account field that you mentioned earlier absent?</p> <p>14 A. I don't know, sir.</p> <p>15 Q. Okay. But you didn't look at the information 13:30:05</p> <p>16 produced by Google to confirm these witnesses'</p> <p>17 statements; is that correct?</p> <p>18 A. So that was not an important thing at the time</p> <p>19 of these cases, sir.</p> <p>20 Q. Okay. And the answer, then, to my question is 13:30:20</p> <p>21 "yes"?</p> <p>22 A. You'll have to rephrase -- you'll have to</p> <p>23 restate the question, sir.</p> <p>24 Q. Okay. You didn't look at the information</p> <p>25 produced by Google to confirm the three witnesses' 13:30:34</p> <p style="text-align: right;">Page 60</p>
<p>1 information produced by Google came from users using a</p> <p>2 browser in private browsing mode is because the suspects</p> <p>3 told you they were using private browsing mode on their</p> <p>4 browser; is that correct?</p> <p>5 A. And the previously described spreadsheets with 13:27:51</p> <p>6 the lack of the Google user identifier.</p> <p>7 Q. How many suspects said that they were using</p> <p>8 private browsing mode in these interviews?</p> <p>9 A. At least three, sir. I don't recall how many</p> <p>10 exactly, but at least three that I can remember. 13:28:18</p> <p>11 Q. How many of these interviews did you conduct</p> <p>12 during your time with the FBI?</p> <p>13 A. I don't understand the question, sir.</p> <p>14 Q. How many interviews of targets or subjects of</p> <p>15 FBI cyber crime investigations did you interview during 13:28:35</p> <p>16 your time at the FBI?</p> <p>17 A. I don't have that number. Quite a few.</p> <p>18 Q. Okay. Is it fair to say that it was more than a</p> <p>19 hundred?</p> <p>20 A. Probably, sir. 13:28:52</p> <p>21 Q. Okay. More than 200?</p> <p>22 A. No, sir.</p> <p>23 Q. Okay. So somewhere in the range of 100 to 200</p> <p>24 interviews; is that correct?</p> <p>25 A. Subject interviews, yes, sir. 13:29:04</p> <p style="text-align: right;">Page 59</p>	<p>1 statements about private browsing mode that are</p> <p>2 referenced in paragraph 37 of Exhibit 1; is that correct?</p> <p>3 A. That's correct, I had no reason to, sir. I had</p> <p>4 no reason to doubt that they were in private browsing</p> <p>5 mode. 13:30:52</p> <p>6 Q. Okay. Which browsers were those witnesses</p> <p>7 using?</p> <p>8 A. I don't have that information, sir.</p> <p>9 Q. Okay. Were those users signed into a Google</p> <p>10 account when they were browsing in private browsing mode? 13:31:10</p> <p>11 MR. MCGEE: Object to the form.</p> <p>12 THE WITNESS: I don't have that information,</p> <p>13 sir.</p> <p>14 Q. BY MR. SPILLY: Okay. Were those -- were those</p> <p>15 users signed out of a Google account when they were 13:31:21</p> <p>16 browsing in private browsing mode?</p> <p>17 MR. MCGEE: Object to the form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: I'm pretty sure that's the same</p> <p>20 question. But I don't know, sir. 13:31:31</p> <p>21 Q. BY MR. SPILLY: It was slightly different. It's</p> <p>22 the inverse, signed into versus signed out of.</p> <p>23 All right. So staying with Exhibit 1, if you go</p> <p>24 to paragraph 25.</p> <p>25 Let me know when you're there. 13:32:02</p> <p style="text-align: right;">Page 61</p>

<p>1 A. Yes, sir, I'm there.</p> <p>2 Q. So it says -- paragraph 25 of Exhibit 1 says,</p> <p>3 "During my approximate 18 years performing cyber crime</p> <p>4 investigations with the FBI, I routinely submitted</p> <p>5 administrative subpoenas to Google relying on IP 13:32:22</p> <p>6 addresses (along with the approximate date range or (sic)</p> <p>7 the suspected activity) of subjects suspected of criminal</p> <p>8 activity."</p> <p>9 Did I read that correctly?</p> <p>10 A. Not quite, but that's the gist of it, sir. 13:32:36</p> <p>11 Q. Sorry.</p> <p>12 So what do -- in paragraph 25 of Exhibit 1, what</p> <p>13 do you mean by "relying on IP addresses"?</p> <p>14 A. Meaning I submitted a request to Google with an</p> <p>15 IP address and a date and time range and requested 13:32:57</p> <p>16 information.</p> <p>17 Q. Okay. And then it says -- the second sentence</p> <p>18 of paragraph 25 of Exhibit 1 says, "Without a court</p> <p>19 order, Google regularly produced responsive information</p> <p>20 associated with the submitted IP address." 13:33:14</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Okay. What do you mean by "responsive</p> <p>24 information" in this paragraph?</p> <p>25 A. They provided information related to the IP 13:33:26</p> <p style="text-align: right;">Page 62</p>	<p>1 A. So it would be -- it usually would start with a</p> <p>2 Google search, and then we would see results from the</p> <p>3 Google search.</p> <p>4 And then typically we would see if they went to</p> <p>5 one of those results from their search. We would see 13:35:44</p> <p>6 that in the spreadsheet.</p> <p>7 But further than that, if they went, say, to</p> <p>8 another page in the website, we wouldn't see that</p> <p>9 additional information.</p> <p>10 Q. Okay. So the information -- so the responsive 13:36:03</p> <p>11 information referenced in paragraph 25 of Exhibit 1 means</p> <p>12 activity on Google websites; is that correct?</p> <p>13 A. Starting on Google websites is one of the pieces</p> <p>14 of responsive information they provided.</p> <p>15 Q. Okay. And what's the other piece? 13:36:26</p> <p>16 A. User information is -- is previously entered.</p> <p>17 User information: Name, maybe address. We would ask</p> <p>18 for, essentially, any and all account information related</p> <p>19 to the IP address.</p> <p>20 Q. Okay. And by "account information" you mean you 13:36:44</p> <p>21 would ask for Google account information; is that</p> <p>22 correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. And then -- all right. How many of these</p> <p>25 administrative subpoenas did you personally submit? 13:37:08</p> <p style="text-align: right;">Page 64</p>
<p>1 address in question.</p> <p>2 Q. Okay. And that information would contain search</p> <p>3 activity; is that correct?</p> <p>4 A. It could, yes. It could -- subscriber</p> <p>5 information if it was a paid account. Maybe billing 13:33:43</p> <p>6 information. Name, although that's not necessarily</p> <p>7 verifiable information. But search terms, yes.</p> <p>8 Q. Okay. And would Gmail be another example of the</p> <p>9 type of information that might be provided in response to</p> <p>10 an administrative subpoena, as referenced in paragraph 25 13:34:11</p> <p>11 of Exhibit 1?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. And I heard you say if it was a paid</p> <p>14 account there may be billing information; is that right?</p> <p>15 A. Yes, sir. 13:34:28</p> <p>16 Q. What do you mean by "paid account"?</p> <p>17 A. If they were hosting a domain or had a Google</p> <p>18 drive space that they were paying for and they had a</p> <p>19 credit card on file with their account, we might get that</p> <p>20 information as well. 13:34:50</p> <p>21 Q. Okay. And did that include browsing activity?</p> <p>22 A. Not complete browsing activity. Limited</p> <p>23 browsing activity is the way I would characterize it.</p> <p>24 Q. Okay. What is the difference between complete</p> <p>25 and limited? 13:35:25</p> <p style="text-align: right;">Page 63</p>	<p>1 A. I don't have a number, sir. I don't know.</p> <p>2 Quite a few.</p> <p>3 Q. Would you have used your own name to submit an</p> <p>4 administrative subpoena to Google?</p> <p>5 A. It was signed by an FBI supervisor, so unlikely 13:37:30</p> <p>6 that my name would be on it. There was a time when I was</p> <p>7 the acting supervisor, and I may have signed them as the</p> <p>8 acting supervisor. But typically it would be the</p> <p>9 supervisor's name for an administrative subpoena, not my</p> <p>10 name. 13:37:49</p> <p>11 Q. Okay. And when you submitted these requests to</p> <p>12 Google along with an IP address, you also submitted</p> <p>13 information regarding the approximate dates of the</p> <p>14 suspected criminal activity; is that correct?</p> <p>15 A. Yes, sir. 13:38:09</p> <p>16 Q. Okay. So at the time that you submitted</p> <p>17 information to Google for one of these administrative</p> <p>18 subpoenas, is it fair to say that you had already begun</p> <p>19 investigating suspected illegal activity associated with</p> <p>20 the IP address? 13:38:26</p> <p>21 A. Many times the subpoena to Google for an IP</p> <p>22 address may have been the first investigative activity</p> <p>23 after we received either a complaint or information</p> <p>24 regarding criminal activity.</p> <p>25 Q. Okay. Are you aware that a Google accountholder 13:38:55</p> <p style="text-align: right;">Page 65</p>

<p>1 I can sign in to their account while they're in Incognito</p> <p>2 mode on the Chrome browser?</p> <p>3 MR. MCGEE: Object to the form.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: I don't know if I am -- I don't 13:39:12</p> <p>6 know if I previously was aware. I don't know if that's</p> <p>7 possible or not. I suspect it is. It seems logical.</p> <p>8 Q. BY MR. SPILLY: Okay. So going back to the</p> <p>9 spreadsheets that you referenced, the Google account</p> <p>10 field. Do you recall that? 13:39:27</p> <p>11 A. I do.</p> <p>12 Q. Okay. If a user was in Incognito mode on the</p> <p>13 Chrome browser and signed into their Google account, that</p> <p>14 account field would not be empty; is that correct?</p> <p>15 A. I don't know that that -- 13:39:46</p> <p>16 MR. MCGEE: Object to the form, speculation.</p> <p>17 THE WITNESS: I don't know. I don't know.</p> <p>18 That's -- I don't know if it would have a Google user</p> <p>19 account or not.</p> <p>20 MR. SPILLY: Okay. Ryan, this is kind of a 13:40:09</p> <p>21 quick turnaround, but could we take another break? I</p> <p>22 need to go also grab some water.</p> <p>23 MR. MCGEE: Sure.</p> <p>24 MR. SPILLY: Okay.</p> <p>25 THE VIDEOGRAPHER: Going off the record at 13:40:17</p> <p style="text-align: right;">Page 66</p>	<p>1 A. And the results from the searches, yes, sir.</p> <p>2 Q. Okay. And so it says, "Sometimes only the IP</p> <p>3 address, sometimes with additional information." When</p> <p>4 you say, "Sometimes only the IP address," did you -- were</p> <p>5 you also submitting the date range of the suspected 13:51:17</p> <p>6 criminal conduct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. So it would be sometimes the IP address</p> <p>9 and the date range of the criminal conduct; is that fair?</p> <p>10 A. That is fair, sir. 13:51:33</p> <p>11 Q. Okay. So there were not acquisitions where you</p> <p>12 submitted the IP address without a date range of</p> <p>13 suspected criminal conduct; is that correct?</p> <p>14 A. That's correct, sir.</p> <p>15 Q. What other additional information might you 13:51:48</p> <p>16 provide to Google, as referenced in paragraph 33 of</p> <p>17 Exhibit 1?</p> <p>18 A. If we had a Google user account, we would</p> <p>19 provide that. If we had a name, we would provide that.</p> <p>20 We would provide information to help Google produce 13:52:06</p> <p>21 responsive information.</p> <p>22 Q. Okay. Did you ever provide the email address of</p> <p>23 the target?</p> <p>24 A. Certainly if we had it and we were able to, yes,</p> <p>25 sir. 13:52:29</p> <p style="text-align: right;">Page 68</p>
<p>1 1:40 p.m.</p> <p>2 (Recess.)</p> <p>3 THE VIDEOGRAPHER: We are back on the record at</p> <p>4 1:49 p.m.</p> <p>5 Q. BY MR. SPILLY: Welcome back, Mr. Nelson. 13:49:24</p> <p>6 A. Thank you very much, sir.</p> <p>7 Q. So typically when the FBI asks for Google to</p> <p>8 provide information associated with an IP address, it</p> <p>9 wants to know which Google accounts have been logged into</p> <p>10 from that IP address; is that correct? 13:49:45</p> <p>11 MR. MCGEE: Object to the form.</p> <p>12 THE WITNESS: Not necessarily. We might be</p> <p>13 asking for other information from Google.</p> <p>14 Q. BY MR. SPILLY: Okay. Would you turn to</p> <p>15 paragraph 33 of Exhibit 1? 13:50:09</p> <p>16 You say, "I was able to submit an IP address</p> <p>17 (sometimes only the IP address, sometimes with additional</p> <p>18 information) and Google would produce responsive</p> <p>19 information. This included private browsing information</p> <p>20 stored by Google connected to those identifiers." 13:50:38</p> <p>21 Did I read that correctly?</p> <p>22 A. You did, sir.</p> <p>23 Q. Okay. When you say "private browsing</p> <p>24 information" in this paragraph, do you mean Google</p> <p>25 searches? 13:50:50</p> <p style="text-align: right;">Page 67</p>	<p>1 Q. Okay. Did you ever provide the phone number?</p> <p>2 A. I don't recall providing a phone number, but</p> <p>3 it's possible.</p> <p>4 Q. Okay. Turn to paragraph 35 of Exhibit 1.</p> <p>5 Let me know when you're there. 13:52:58</p> <p>6 A. Okay. I'm there, sir.</p> <p>7 Q. Okay. So in paragraph 35, you discuss the</p> <p>8 cyberstalking investigation that you conducted where you</p> <p>9 submitted an IP address and then got back unique URLs</p> <p>10 that the IP address accessed. Is that a fair 13:53:26</p> <p>11 characterization?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You received back unique URLs that the IP</p> <p>14 address accessed because Google identified the account --</p> <p>15 the Google account that was used by your target for 13:53:43</p> <p>16 online browsing; is that correct?</p> <p>17 MR. MCGEE: Object to the form.</p> <p>18 THE WITNESS: I'm going to ask you to repeat the</p> <p>19 question, sir.</p> <p>20 Q. BY MR. SPILLY: Sure. 13:54:00</p> <p>21 So in this investigation discussed in</p> <p>22 paragraph 35, you say that, "After submitting the IP</p> <p>23 address and receiving responsive information from Google,</p> <p>24 including unique URLs that the IP address accessed and</p> <p>25 also accounts that the IP address logged into in close 13:54:20</p> <p style="text-align: right;">Page 69</p>

<p>1 proximity to the time that the cyberstalking email was 2 sent."</p> <p>3 Do you see that?</p> <p>4 A. I do, sir.</p> <p>5 Q. Okay. What -- so when you -- you received 13:54:33 6 unique URLs that the IP address accessed from Google 7 because the target of the investigation referenced in 8 paragraph 35 of Exhibit 1 was signed into a Google 9 account; is that correct?</p> <p>10 MR. MCGEE: Object to the form. 13:54:56</p> <p>11 THE WITNESS: I don't know -- I don't know if 12 the target was signed in or not, sir.</p> <p>13 Q. BY MR. SPILLY: You don't know one way or 14 another whether the target was signed in or signed out of 15 a Google account? 13:55:09</p> <p>16 A. The target told me they were not signed in and 17 that it was private browsing mode.</p> <p>18 Q. For Exhibit -- you're talking about the target 19 in paragraph 35 of Exhibit 1?</p> <p>20 A. I am, sir. 13:55:35</p> <p>21 Q. Okay. The target of the investigation 22 referenced in paragraph 35 was -- what was the person's 23 name?</p> <p>24 MR. MCGEE: Object to the form.</p> <p>25 Mr. Nelson, if you're allowed to answer that. 13:55:52 Page 70</p>	<p>1 conducted pursuant to a legitimate purpose; is that 2 correct?</p> <p>3 A. Yes, sir. I don't know if that's one of the 4 listed legal requirements for admin subpoenas, but it 5 makes sense. 13:58:07</p> <p>6 MR. SPILLY: I'm going to introduce another 7 exhibit.</p> <p>8 (Exhibit 3, Report to Congress on the Use of 9 Administrative Subpoena Authorities by Executive 10 Branch Agencies and Entities, marked for 13:58:13 11 identification electronically by counsel.)</p> <p>12 MR. SPILLY: This is Exhibit 3.</p> <p>13 Q. This is obviously an extremely long document. 14 I'm just going to ask you about the text that's on 15 page 4. 13:58:53</p> <p>16 MR. MCGEE: And, Mr. Nelson, consistent with the 17 other depositions in this case, although the text may 18 appear on page 4, if you do need to review the context 19 surrounding that document, please do take that time.</p> <p>20 THE WITNESS: So my pages aren't marked. I'm 13:59:18 21 trying to find page 4, sir.</p> <p>22 Q. BY MR. SPILLY: It should be at the bottom 23 right. It should say 4 out of 200 or so.</p> <p>24 A. Ah, I see it now, sir.</p> <p>25 Q. Okay. 13:59:33 Page 72</p>
<p>1 I'm not sure what instructions the FBI has on what you 2 can and cannot reveal with regard to your investigation.</p> <p>3 THE WITNESS: Sir, respectfully I can't answer 4 any questions about case-specific information. Only my 5 actions and activity related to investigations. So I 13:56:12 6 can't provide subject or victim names.</p> <p>7 Q. BY MR. SPILLY: Was the -- was the investigation 8 referenced in paragraph 35 of Exhibit 1 an investigation 9 of a non-US citizen?</p> <p>10 MR. MCGEE: Object to the form. 13:56:34 11 Same caution to the witness.</p> <p>12 THE WITNESS: Respectfully, sir, any questions 13 about the investigation itself would have to -- I would 14 have to have approval from the FBI to discuss specifics 15 of the case. 13:56:48</p> <p>16 Q. BY MR. SPILLY: Okay. So you can't tell me one 17 way or another whether that was a US citizen or a non-US 18 citizen?</p> <p>19 A. That's correct, sir.</p> <p>20 Q. Okay. So turning back to administrative 13:57:14 21 subpoenas, there are limitations on the scope of 22 information an agency can request through an 23 administrative subpoena; is that correct?</p> <p>24 A. That is correct, sir.</p> <p>25 Q. Okay. For example, the investigation must be 13:57:50 Page 71</p>	<p>1 A. I've got it.</p> <p>2 Q. Okay. So if you look at the second full 3 paragraph on page 4 of Exhibit 3, do you see the section 4 that starts with: "Federal courts subject the exercise"? 5 A. I do see that, sir. 13:59:57</p> <p>6 Q. Okay. So can you read this paragraph out loud 7 for me, please?</p> <p>8 A. Sir, I can. I don't understand the purpose of 9 me reading things aloud. I'm obviously begrudgingly 10 willing to do so, I just don't understand what the 14:00:17 11 purpose of that is.</p> <p>12 Q. Well, I could, but I figure we should -- we 13 could trade off, but -- I can read it. How about that?</p> <p>14 A. Fair enough, sir.</p> <p>15 Q. Okay. "Federal courts subject the exercise of 14:00:33 16 administrative subpoena authority to a reasonableness 17 analysis, not the more stringent Fourth Amendment 18 probable cause analysis applied in situations involving 19 search and seizure and issuance of a warrant. In United 20 States v Powell, the Court articulated the deferential 14:00:56 21 standard for judicial review of administrative 22 enforcement actions in a four-factor evaluation of good 23 faith issuance, requiring that: (1) the investigation is 24 conducted pursuant to a legitimate purpose, (2) the 25 information requested under the subpoena is relevant to 14:01:15 Page 73</p>

<p>1 that purpose, (3) the agency does not already have the 2 information it is seeking with the subpoena, and (4) the 3 agency has followed the necessary administrative steps in 4 issuing the subpoena."</p> <p>5 Did I read that correctly? 14:01:32</p> <p>6 A. You did, sir.</p> <p>7 Q. Okay. So an agency that's conducting an 8 investigation and is seeking an administrative subpoena 9 has to -- will only get the administrative subpoena if 10 the investigation is conducted pursuant to a legitimate 14:01:54 11 purpose; is that correct?</p> <p>12 A. According to the Supreme Court ruling, yes, sir.</p> <p>13 Q. And the information you are seeking must be 14 relevant to the legitimate purpose; is that correct?</p> <p>15 A. Again, according to the Supreme Court ruling, 14:02:11 16 yes, sir.</p> <p>17 Q. Okay. To show that there's a legitimate purpose 18 for a subpoena -- for an administrative subpoena, the 19 agency submitting the subpoena needs to have some idea of 20 who or what they are targeting; is that fair? 14:02:25</p> <p>21 A. Not necessarily who, sir. That's part of the 22 point in serving the subpoena is to determine who is 23 responsible for the alleged criminal act we're 24 investigating.</p> <p>25 Q. Okay. But you need to have some idea of what 14:02:53 Page 74</p>	<p>1 Exhibit 4.</p> <p>2 (Exhibit 4, Administrative subpoenas, 18 USCA 3 Section 3486, marked for identification 4 electronically by counsel.)</p> <p>5 Q. BY MR. SPILLY: Let me know if you can see that. 14:04:34</p> <p>6 A. Not yet, sir.</p> <p>7 Q. Okay.</p> <p>8 MR. MCGEE: It's Exhibit 5 that just says, "Tab 9 4," the Word document?</p> <p>10 MR. SPILLY: It looks like there's some kind of 14:05:21 11 a lag, and I uploaded it twice.</p> <p>12 THE WITNESS: I can see it, sir.</p> <p>13 MR. SPILLY: Let's just -- we can figure that 14 out at a break, but let's just look at Exhibit 4.</p> <p>15 MR. MCGEE: Okay. 14:05:36</p> <p>16 Q. BY MR. SPILLY: Okay. So Exhibit 4 is the text 17 of 18 USC Section 3486 that you cited in paragraph 24 of 18 your report as the authority for administrative 19 subpoenas; is that correct?</p> <p>20 A. Yes, sir. 14:05:57</p> <p>21 Q. Okay. And so 18 USC 3486 permits the filing of 22 an administrative subpoena in an investigation pertaining 23 to a federal healthcare offense; is that correct?</p> <p>24 A. Or one involving the sexual exploitation of 25 children, sir. 14:06:24</p> <p style="text-align: right;">Page 76</p>
<p>1 you're targeting, meaning some basis to believe that 2 there's criminal conduct associated with the IP address 3 that you're submitting; is that correct?</p> <p>4 MR. MCGEE: Object to the form, asked and 5 answered. 14:03:11</p> <p>6 THE WITNESS: That's a fair statement.</p> <p>7 Q. BY MR. SPILLY: Okay. Go back to Exhibit 1. Go 8 to paragraph 24.</p> <p>9 Let me know when you're there.</p> <p>10 A. I'm here, sir. 14:03:35</p> <p>11 Q. Okay. So paragraph 24, the first sentence -- of 12 Exhibit 1 -- the first sentence reads: "An 13 administrative subpoena calls for the production of 14 records, relevant items and telephone toll records."</p> <p>15 Did I read that right? 14:03:49</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And then there's a footnote, footnote 6. 18 And that footnote cites 18 USC Section 3486 as the 19 authority for administrative subpoenas; is that correct?</p> <p>20 A. Yes, sir. 14:04:04</p> <p>21 Q. Okay. And you don't cite any other statutes 22 related to administrative subpoenas in Exhibit 1; is that 23 correct?</p> <p>24 A. No, sir.</p> <p>25 Q. Okay. Okay. Introduce now what we'll mark as 14:04:20 Page 75</p>	<p>1 Q. Okay. And in either of those instances, either 2 federal healthcare offense or federal offense involving 3 sexual exploitation or abuse of children, the subpoena 4 request would have to be based on a connection between 5 the information requested and either a federal healthcare 14:06:45 6 offense or an offense involving the sexual exploitation 7 or abuse of children; is that correct?</p> <p>8 A. That's correct, sir.</p> <p>9 Q. Okay. If you look down to Section 3, the Roman 10 numerals there -- or Section 2 -- the two lowercase Roman 14:07:14 11 numerals there.</p> <p>12 Let me know when you can see that.</p> <p>13 A. I believe so, sir.</p> <p>14 Q. Okay. And that says, "An unregistered sex 15 offender" -- so, "An investigation of an unregistered sex 14:07:28 16 offender conducted by the US Marshal Service, the 17 director of the United States Marshal Service."</p> <p>18 Did I read that right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. So 18 USC permits the use of an 14:07:44 21 administrative subpoena in an investigation related to an 22 unregistered sex offender conducted by the US Marshal 23 Service or the director of the United States Marshal 24 Service; is that correct?</p> <p>25 A. For Section 2 or ii, yes, sir. 14:08:05</p> <p style="text-align: right;">Page 77</p>

<p>1 Q. Okay. Other than in that instance, the subpoena 2 request would have to demonstrate a connection between 3 the information requested and an unregistered -- an 4 investigation of an unregistered sex offender; is that 5 correct? 14:08:28</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And then the last bullet -- or last lower 8 case Roman numeral iii says, "An offense under section 9 871 or 879, or a threat against a person protected by the 10 United States Secret Service under paragraph (5) or (6) 14:08:47 11 of section 3056."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes, sir, you did.</p> <p>14 Q. Okay. So 18 USC 3486 also permits the filing of 15 an administrative subpoena in an investigation pertaining 14:09:02 16 to a threat against a person protected by the United 17 States Secret Service; is that correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And in such an instance, in order to obtain the 20 subpoena, you would have to demonstrate a connection 14:09:16 21 between the information requested and a threat against a 22 person protected by the United States Secret Service; 23 correct?</p> <p>24 A. Correct, sir.</p> <p>25 Q. So I think you -- you discussed earlier some 14:09:36</p> <p style="text-align: right;">Page 78</p>	<p>1 only had IP address and a date and time. But you also 2 had evidence that would connect it to one of the three 3 uses of an administrative subpoena that we just 4 discussed; right?</p> <p>5 A. When we were serving -- 14:11:16</p> <p>6 THE WITNESS: Sorry, Mr. McGee.</p> <p>7 MR. MCGEE: That's okay.</p> <p>8 Object to the form.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: When we served administrative 14:11:21 11 subpoenas, yes, that is correct.</p> <p>12 Q. BY MR. SPILLY: Okay. Okay. And then in 13 response to administrative subpoena requests -- actually, 14 hold on.</p> <p>15 So in -- paragraph 35 of Exhibit 1 discusses 14:11:50 16 specific investigation into cyberstalking.</p> <p>17 Just let me know when you're back on that page.</p> <p>18 A. I'm back on that page, sir.</p> <p>19 Q. Okay. For the investigation referenced in 20 paragraph 35, did you seek that information via an 14:12:17 21 administrative subpoena?</p> <p>22 A. No, sir. That would have been either via Grand 23 Jury subpoena or a 2703(d) court order or a search 24 warrant.</p> <p>25 Q. Okay. You don't recall which of those requests 14:12:37</p> <p style="text-align: right;">Page 80</p>
<p>1 additional information you would submit along with an IP 2 address when you were submitting administrative subpoenas 3 to Google; is that correct?</p> <p>4 MR. MCGEE: Object to the form.</p> <p>5 THE WITNESS: At times -- 14:09:50</p> <p>6 Sorry. Go ahead, Mr. McGee. Sorry.</p> <p>7 MR. MCGEE: Object to the form.</p> <p>8 THE WITNESS: At times, yes. Depending on what 9 we had available to us.</p> <p>10 Q. BY MR. SPILLY: And some of that information 14:10:01 11 would be, for example, the name of the suspect?</p> <p>12 A. At times, yes, sir.</p> <p>13 Q. And another example of information might be the 14 suspect's email address?</p> <p>15 A. At times, yes, sir. 14:10:13</p> <p>16 Q. Okay. And did this information that you 17 provided vary from one investigation to another?</p> <p>18 A. Yes, it did, sir.</p> <p>19 Q. Okay. So sometimes you would have additional 20 information beyond IP address -- sorry. Scratch that. 14:10:34</p> <p>21 Why did it vary by subpoena?</p> <p>22 A. Depending on the case information we had, sir. 23 Sometimes all we had was an IP address and a date and 24 time. Sometimes we had more information.</p> <p>25 Q. But you also -- okay. You said sometimes we 14:10:54</p> <p style="text-align: right;">Page 79</p>	<p>1 was submitted in connection with the investigation 2 referenced in paragraph 35 of Exhibit 1?</p> <p>3 A. I don't, sir.</p> <p>4 Q. Okay. Staying with Exhibit 1, if you go to 5 paragraph 26, it says, "I reviewed Google's Transparency 14:13:12 6 Report with a focus on responses to subpoenas, which 7 states that Google disclosed information responsive to 8 subpoena requests for a range of 74 and 88 percent from 9 2012 to 2020. This range of Google's disclosure is 10 consistent with my experience and investigations during 14:13:35 11 my time at the FBI."</p> <p>12 Did I read that correctly?</p> <p>13 A. You did, sir.</p> <p>14 Q. What percentage of those responses involved 15 requests for information related to a particular IP 14:13:54 16 address, if you know?</p> <p>17 A. From the Google Transparency Report, sir, or my 18 own actions? Either way, I don't know.</p> <p>19 Q. Okay. And so 74 to 88 percent range is not 20 100 percent; right? 14:14:23</p> <p>21 A. No, sir.</p> <p>22 Q. Okay. So sometimes Google did not provide 23 responsive information in response to requests; is that 24 correct?</p> <p>25 A. That is correct. 14:14:38</p> <p style="text-align: right;">Page 81</p>

<p>1 Q. And why would Google not provide responsive 2 information in response to requests from law enforcement?</p> <p>3 MR. MCGEE: Object to the form, speculation.</p> <p>4 THE WITNESS: Sir, in my experience, there was 5 an error in the data. So either we received information 14:14:52 6 that had, say, a transposed IP address or on the request 7 an IP address or other piece of information was incorrect 8 and, therefore, it would return with negative results.</p> <p>9 Q. BY MR. SPILLY: Okay. Turn down to paragraph 27 10 of Exhibit 1. 14:15:25</p> <p>11 A. Yep. I'm there, sir.</p> <p>12 Q. So in paragraph 27 of Exhibit 1, you state that 13 IPv6 addresses submitted with administrative subpoenas 14 became more prevalent in 2017; is that correct?</p> <p>15 A. Yes, sir. 14:15:44</p> <p>16 Q. Okay. And you transitioned out of the FBI cyber 17 crime unit in 2016; is that correct?</p> <p>18 A. In 2016, I became the full time SWAT team 19 leader, but I remained involved in the cyber crime 20 program. 14:16:08</p> <p>21 Q. Okay. What do you mean by "I remained 22 involved"?</p> <p>23 A. So for the first year, I was the full time SWAT 24 team leader, but I was also the acting supervisor for the 25 squad, the interim supervisor, while we waited for the 14:16:28 Page 82</p>	<p>1 information associated with the submitted IP address."</p> <p>2 Did I read that right?</p> <p>3 A. You did, sir.</p> <p>4 Q. Is the responsive information that Google would 5 produce in response to grand jury subpoena requests the 14:18:37 6 same as the responsive information referenced in 7 connection with administrative subpoenas in your report?</p> <p>8 A. Yes, sir.</p> <p>9 MR. MCGEE: Object to the form.</p> <p>10 THE WITNESS: Sorry. Sorry, Mr. McGee. 14:18:54</p> <p>11 MR. MCGEE: That's okay.</p> <p>12 So object to the form.</p> <p>13 You can answer, which you already did.</p> <p>14 Q. BY MR. SPILLY: Okay. During your time at the 15 FBI, how many grand jury subpoenas with the FBI to Google 14:19:16 16 did you work on?</p> <p>17 A. I don't know, sir. Quite a few.</p> <p>18 Q. Can you give me a rough estimate?</p> <p>19 A. Certainly dozens. I can't -- I can't put a 20 number on it. Certainly dozens. 14:19:33</p> <p>21 Q. Okay. How many grand jury subpoenas did you 22 personally submit?</p> <p>23 A. I've answered that question, sir. I don't know 24 how many I've personally submitted.</p> <p>25 Q. Federal law, like administrative subpoenas -- 14:19:55 Page 84</p>
<p>1 new supervisor to transfer in.</p> <p>2 After that, I remained as the InfraGard 3 coordinator. InfraGard is an information sharing program 4 sponsored by the FBI that is a cyber-based program, where 5 we exchange information with the critical infrastructure 14:16:49 6 sectors in the local area.</p> <p>7 And last, I assisted other agents in the 8 division, even though I was SWAT team leader, with 9 reviewing evidence, formulating investigative plans and 10 other investigative matters when they needed assistance. 14:17:12</p> <p>11 Q. After 20- -- after you moved to the SWAT team 12 position, you didn't personally submit administrative 13 subpoenas to Google; is that correct?</p> <p>14 A. No, sir. That is correct, sir.</p> <p>15 Q. All right. Go back to Exhibit 1. And you can 14:17:43 16 go to paragraph 28, which is on page 6.</p> <p>17 Let me know when you're there.</p> <p>18 A. I'm there, sir.</p> <p>19 Q. Okay. So this is -- paragraph 28 of Exhibit 1 20 says, "Also during my approximate 18 years performing 14:18:02 21 cyber crime investigations with the FBI, I also submitted 22 grand jury subpoenas and search warrants to Google 23 relying on IP addresses (along with the approximate date 24 range of the suspected activity) of subjects suspected of 25 criminal activity. Google regularly produced responsive 14:18:22 Page 83</p>	<p>1 sorry. Start over.</p> <p>2 Like administrative subpoenas, federal law 3 placed limits on grand jury subpoenas; is that correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And so I will introduce -- 14:20:19</p> <p>6 MR. SPILLY: Actually, should we go off the 7 record for one second?</p> <p>8 MR. MCGEE: Sure.</p> <p>9 MR. SPILLY: Let's talk to the court reporter.</p> <p>10 THE VIDEOGRAPHER: Going off the record at 14:20:26 11 2:20 p.m. 12 (Discussion off the record.)</p> <p>13 THE VIDEOGRAPHER: We are back on the record at 14 2:22 p.m.</p> <p>15 MR. SPILLY: Okay. I am going to introduce what 14:22:13 16 has been marked as Exhibit 5.</p> <p>17 (Exhibit 5, Screenshots from the United States 18 Department of Justice website, marked for 19 identification electronically by counsel.)</p> <p>20 Q. BY MR. SPILLY: Let me know when you can see 14:22:26 21 that one.</p> <p>22 A. I can see it, sir.</p> <p>23 Q. Okay. And if you go to page 2 of Exhibit 5. 24 Let me know when you can -- when you found the 25 section that has a header that says, "Power of a Grand 14:22:53 Page 85</p>

<p>1 Jury Limited By Its Function."</p> <p>2 A. I'm there, sir.</p> <p>3 Q. All right. Okay. So a grand jury is limited by</p> <p>4 its function for a possible return of an indictment; is</p> <p>5 that correct? 14:23:17</p> <p>6 A. Yes, sir.</p> <p>7 Q. And when submitting a grand jury subpoena, the</p> <p>8 request would have to demonstrate some connection between</p> <p>9 the information requested and a potential criminal case;</p> <p>10 is that correct? 14:23:30</p> <p>11 A. Yes, sir.</p> <p>12 Q. So when submitting a grand jury subpoena, the</p> <p>13 FBI is requesting -- the FBI, as the requester, would not</p> <p>14 be able to request information on a user without at least</p> <p>15 some evidence that the law is being violated; is that 14:23:49</p> <p>16 correct?</p> <p>17 A. So the first part of your question indicated a</p> <p>18 user. I would say, no, we can't use a grand jury</p> <p>19 subpoena unless there is an allegation of criminal</p> <p>20 activity. 14:24:10</p> <p>21 Q. Okay. And you have to submit -- you have to</p> <p>22 request a grand jury subpoena; is that right?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And if all you were to submit was an IP address</p> <p>25 with no allegations or description of any type of 14:24:25</p> <p style="text-align: right;">Page 86</p>	<p>1 Q. Okay. And the responsive information that</p> <p>2 you're referencing in paragraph 28 of Exhibit 1, that is</p> <p>3 information on Google websites, like search history on</p> <p>4 Google.com and then also IP address; is that correct?</p> <p>5 MR. MCGEE: Object to the form, mischaracterizes 14:26:27</p> <p>6 the report.</p> <p>7 THE WITNESS: So it will be the same answer for</p> <p>8 the administrative subpoena question you asked prior.</p> <p>9 Q. BY MR. SPILLY: Okay. All right. Now, turning</p> <p>10 to search warrants. 14:26:46</p> <p>11 To issue a search warrant, investigators need to</p> <p>12 show probable cause that the search is justified; is that</p> <p>13 correct?</p> <p>14 A. That's a fair summary, yes, sir.</p> <p>15 Q. Okay. Probable cause means a reasonable basis 14:26:57</p> <p>16 for the belief that a crime has been committed; is that</p> <p>17 correct?</p> <p>18 A. That's the first part of it, yes, sir.</p> <p>19 Q. Okay. What's -- sorry. What's the second part?</p> <p>20 A. And that evidence of the crime is on the thing 14:27:12</p> <p>21 that we want to search.</p> <p>22 Q. Okay. And to make this showing of -- and so --</p> <p>23 okay. I'll start that one over.</p> <p>24 So just focusing on the belief that the crime</p> <p>25 has been committed, to make that showing, you have to 14:27:28</p> <p style="text-align: right;">Page 88</p>
<p>1 investigation or criminal conduct, that would not satisfy</p> <p>2 that requirement; is that correct?</p> <p>3 MR. MCGEE: Object to the form.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: I believe that to be correct, sir. 14:24:36</p> <p>6 Q. BY MR. SPILLY: Did you ever have to submit</p> <p>7 additional information beyond an IP address when making a</p> <p>8 grand jury subpoena request to Google?</p> <p>9 A. Did I ever have to, sir? I don't recall the</p> <p>10 grand jury ever coming back and saying, "We need more 14:25:02</p> <p>11 information." I don't remember any grand jury subpoena</p> <p>12 requests being denied.</p> <p>13 Q. Would you go to paragraph 28 of Exhibit 1?</p> <p>14 Let me know when you're there.</p> <p>15 A. I'm there, sir. 14:25:30</p> <p>16 Q. Okay. Paragraph 28 of Exhibit 1 says, "Also</p> <p>17 during my approximate 18 years performing cyber crime</p> <p>18 investigations with the FBI, I also submitted grand jury</p> <p>19 subpoenas and search warrants to Google relying on IP</p> <p>20 addresses (along with the approximate date range of the 14:25:50</p> <p>21 suspected activity) of subjects suspected of criminal</p> <p>22 activity. Google regularly produced responsive</p> <p>23 information associated with the submitted IP address."</p> <p>24 Do you see that?</p> <p>25 A. I do, sir. 14:26:02</p> <p style="text-align: right;">Page 87</p>	<p>1 provide, for example, affidavits from investigators</p> <p>2 describing where and what they will search; is that</p> <p>3 correct?</p> <p>4 A. Yeah, that's typically more of an Attachment A</p> <p>5 for -- for where and what they will search. But, yes, 14:27:55</p> <p>6 that has to be outlined in the search warrant.</p> <p>7 Q. And then you also need to provide affidavits</p> <p>8 describing why investigators believe the search is likely</p> <p>9 to uncover relevant evidence; is that correct?</p> <p>10 A. That's correct, sir. 14:28:16</p> <p>11 Q. Okay. And then if you're going to seize</p> <p>12 anything from the target, you also have to provide</p> <p>13 affidavits describing what they will seize; is that</p> <p>14 right? Or what will be seized, rather.</p> <p>15 A. A list of things we're searching for. That's 14:28:41</p> <p>16 Attachment B, sir.</p> <p>17 Q. Okay. During your time at the FBI, how many</p> <p>18 search warrants involving Google did you personally</p> <p>19 participate in submitting?</p> <p>20 A. I don't have that number, sir. I don't know. 14:29:02</p> <p>21 Multiple search warrants involving Google.</p> <p>22 Q. Would it be less than five?</p> <p>23 A. No, I would say it's more than five. But I</p> <p>24 don't know exactly how many, sir.</p> <p>25 Q. Okay. Less than ten? 14:29:19</p> <p style="text-align: right;">Page 89</p>

<p>1 A. Sir, I -- I would be guessing, and I don't want 2 to guess in a deposition.</p> <p>3 Q. Okay. You can't recall the number of times that 4 you were involved in search warrants submitted to Google 5 while you worked at the FBI; is that correct? 14:29:37</p> <p>6 A. That -- I can't remember the number of times, 7 no. Because involved in a search warrant doesn't mean 8 I'm the affiant. So I -- I don't know how many -- I 9 don't know how many I was involved in.</p> <p>10 Q. Okay. That's helpful. 14:29:52 11 How many times were you the affiant?</p> <p>12 A. I don't have that number either, sir.</p> <p>13 MR. SPILLY: Okay. Ryan, how about we -- could 14 we take ten again?</p> <p>15 MR. MCGEE: Yeah. 14:30:21</p> <p>16 MR. SPILLY: We can go off the record.</p> <p>17 THE VIDEOGRAPHER: Going off the record at 18 2:30 p.m. 19 (Recess.)</p> <p>20 THE VIDEOGRAPHER: We are back on the record at 14:42:15 21 2:42 p.m.</p> <p>22 Q. BY MR. SPILLY: Okay. Welcome back, Mr. Nelson. 23 So going back to Exhibit 1, your report, will 24 you turn to paragraph 32? 25 Let me know when you're there. 14:42:40</p> <p style="text-align: right;">Page 90</p>	<p>1 observation on.</p> <p>2 Q. Okay. So turn to paragraph 33.</p> <p>3 A. Yes, sir.</p> <p>4 Q. You state there that Google was able to produce 5 responsive information when it was unclear who the IP 14:44:05 6 address belonged to; correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Why would it be unclear who the IP address 9 belonged to?</p> <p>10 A. In this example, sir, if it was a public library 14:44:19 11 or cybercafé-type situation.</p> <p>12 Q. Okay. And what you're saying there is that more 13 than one user can use an IP -- the same IP address in 14 those situations you described; is that correct?</p> <p>15 A. That's correct, sir. 14:44:42</p> <p>16 Q. Okay. And users who share a single device will 17 have the same IP address; is that correct?</p> <p>18 A. Users who share a single device will have a -- 19 the same IP address? Yes, that's correct, sir.</p> <p>20 Q. Users on different devices -- like in the 14:45:06 21 internet café example that you cited, users on different 22 devices connected to the same Wi-Fi router will have the 23 same IP address; is that correct?</p> <p>24 A. Depending on how the cybercafé is configured, 25 yes, that is most likely correct. 14:45:24</p> <p style="text-align: right;">Page 92</p>
<p>1 A. I'm there, sir.</p> <p>2 Q. Okay. And paragraph 32 says, "Based on my 3 education, training and experience at the FBI, and 4 particularly my interactions with Google in that 5 capacity, Professor Zervas' position regarding 14:42:55 6 linkability runs contrary to matters I personally 7 observed during my career with the FBI."</p> <p>8 Did I read that correctly?</p> <p>9 A. You did, sir.</p> <p>10 Q. Okay. And so 32 states your opinion, and it is 14:43:07 11 based on your education, training and experience at the 12 FBI, and particularly your interactions with Google in 13 that capacity; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. You did not rely on any other information, 14:43:23 16 methodology or analysis in disputing Professor Zervas' 17 position regarding linkability; is that correct?</p> <p>18 A. I'm going to ask you to repeat that question, if 19 you don't mind, please.</p> <p>20 Q. Sure. 14:43:37 21 You did not rely on any other information, 22 methodology or analysis in disputing Professor Zervas' 23 position regarding linkability; is that correct?</p> <p>24 A. And "in my education, training and experience" 25 is pretty broad. So, yeah, that's what I made the 14:43:51</p> <p style="text-align: right;">Page 91</p>	<p>1 Q. Okay. Okay. And so in 33, you say in the 2 second-to-last sentence, "This included private browsing 3 information stored by Google connected to those 4 identifiers."</p> <p>5 Did I read that right? 14:45:57</p> <p>6 A. You did, sir.</p> <p>7 Q. Okay. Those identifiers that you're referring 8 to here is the IP address; is that right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did the responsive information that Google 14:46:18 11 produced ever contain information related to a different 12 individual than the individual you were targeting?</p> <p>13 A. Repeat that question, please, sir.</p> <p>14 Q. Sure.</p> <p>15 So when -- when Google produced responsive 14:46:36 16 information, did it ever -- did the responsive 17 information ever contain information related to a 18 different individual than the individual that you were 19 targeting?</p> <p>20 A. Individual, yes, on one occasion. Computer, no. 14:46:57</p> <p>21 Q. Okay. But a different individual. So that's 22 the shared device scenario that we were discussing; is 23 that right?</p> <p>24 MR. MCGEE: Object to the form.</p> <p>25 THE WITNESS: Yes, sir. 14:47:20</p> <p style="text-align: right;">Page 93</p>

<p>1 Q. BY MR. SPILLY: Okay. And when you received --</p> <p>2 so in the case where that is a shared device -- that is</p> <p>3 shared by more than one user that has the same IP</p> <p>4 address, in order to figure out which user was using that</p> <p>5 device, you would need additional information beyond just 14:47:43</p> <p>6 the IP address; is that correct?</p> <p>7 A. With the IP address and the information provided</p> <p>8 by Google, we have been able to identify subjects of</p> <p>9 investigations simply with an IP address, date and time,</p> <p>10 even though it was a shared IP address, based on the URL 14:48:05</p> <p>11 information provided by Google where the subject accessed</p> <p>12 unique URLs linked to the subject.</p> <p>13 Q. And they were linked to the subject because</p> <p>14 those URLs were associated with the subject Google</p> <p>15 account; is that correct? 14:48:37</p> <p>16 A. Or another account, either bank account or</p> <p>17 different email provider.</p> <p>18 Q. Okay. So bank account, like logging in on Bank</p> <p>19 of America's website?</p> <p>20 A. Yes, sir. 14:48:53</p> <p>21 Q. Okay. And then a different email provider, by</p> <p>22 that you mean, like, Yahoo email; is that correct?</p> <p>23 A. I do, sir.</p> <p>24 Q. Okay. And that was -- and so that is personally</p> <p>25 identifiable information, the bank account and email 14:49:11</p> <p style="text-align: right;">Page 94</p>	<p>1 the witness -- or you interviewed the suspect, and they</p> <p>2 told you in an interview that they were using private</p> <p>3 browsing mode; is that correct?</p> <p>4 A. That's correct, sir.</p> <p>5 Q. Okay. So would you agree with me that an IP 14:51:31</p> <p>6 address without additional information does not uniquely</p> <p>7 identify a user?</p> <p>8 A. I know we're split hairs. With an IP address</p> <p>9 and a date and time and a response from Google, there has</p> <p>10 not been one occasion I have not been able to identify 14:51:52</p> <p>11 the subject.</p> <p>12 Q. Okay. But I'm saying, with just an IP address</p> <p>13 you can't uniquely identify an individual; is that fair?</p> <p>14 A. I can identify their device.</p> <p>15 Q. Okay. But if two people used the device, 14:52:11</p> <p>16 there's no way to use just that IP address to figure out</p> <p>17 which of the two people was using the device; is that</p> <p>18 correct?</p> <p>19 A. I'm not trying to be argumentative, but that</p> <p>20 just rarely, if ever, happened. 14:52:28</p> <p>21 When we did subpoenas, we got the results, and</p> <p>22 it was a device -- it wasn't a shared device. There was</p> <p>23 only -- in all of these hundreds of times, that happened</p> <p>24 maybe once or twice.</p> <p>25 So the vast, vast majority of the time, if I 14:52:43</p> <p style="text-align: right;">Page 96</p>
<p>1 provider; is that correct?</p> <p>2 A. I don't know if it technically meets the</p> <p>3 definition of PII, if that's the gist of your question.</p> <p>4 But it was enough for us to identify the subject.</p> <p>5 Q. Okay. Without that information, if you go back 14:49:32</p> <p>6 to, like, where you just have the IP address and there's</p> <p>7 a shared device, you can't use just that IP address to</p> <p>8 determine who was using the device; is that correct?</p> <p>9 A. No, I don't think that's correct. I can</p> <p>10 determine who's using the device based on followup 14:49:55</p> <p>11 investigation and based on an analysis of the URLs that</p> <p>12 Google provided.</p> <p>13 Q. Yeah, I've got you.</p> <p>14 Okay. But with -- so I'm just saying if you</p> <p>15 just had the IP address and none of the other additional 14:50:09</p> <p>16 information you described just now, you wouldn't be able</p> <p>17 to identify the user who's using the shared device; is</p> <p>18 that right?</p> <p>19 A. In that very limited instance, yes, that's</p> <p>20 correct. 14:50:22</p> <p>21 Q. Okay. Was the data -- or the responsive</p> <p>22 information referenced in paragraph 33 of Exhibit 1 ever</p> <p>23 associated with private browsing sessions?</p> <p>24 A. Yes, it was.</p> <p>25 Q. Okay. And you knew that because you interviewed 14:51:17</p> <p style="text-align: right;">Page 95</p>	<p>1 have an IP address, a date and time, and I get</p> <p>2 responsive information from Google, it's the person.</p> <p>3 It's the person who's using that device. There's not a</p> <p>4 cybercafé, there's not multiple people using a cell</p> <p>5 phone. That's -- nobody does that anymore. 14:52:59</p> <p>6 Q. Okay. What about in the cybercafé example?</p> <p>7 A. We were still able to identify the subject.</p> <p>8 And, again, that was in the vast, vast minority</p> <p>9 of investigations.</p> <p>10 Q. Okay. But just to be clear, in the cybercafé 14:53:20</p> <p>11 example, you were able to identify the subject with --</p> <p>12 via the IP address, the dates and the additional</p> <p>13 information provided by Google; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And cybercafés are not the only situation where 14:53:48</p> <p>16 more than one device might share an IP address; is that</p> <p>17 correct?</p> <p>18 A. In theory, yes. In practice, it's the only one</p> <p>19 I came across in my 18 years working cyber crime. One</p> <p>20 cybercafé. 14:54:10</p> <p>21 Q. You identified a suspect who used a cybercafé?</p> <p>22 A. Yeah, and we still identified the suspect. But,</p> <p>23 yes, they did -- they did their illegal activity from a</p> <p>24 computer at a cybercafé.</p> <p>25 Q. Okay. What country was the cybercafé located 14:54:26</p> <p style="text-align: right;">Page 97</p>

<p>1 in?</p> <p>2 A. So we're back to the FBI does not authorize me</p> <p>3 to give specifics about cases, so I can't answer specific</p> <p>4 questions about when, where, who.</p> <p>5 Q. Okay. You can't tell me, then, if the cybercafé 14:54:51</p> <p>6 user that you just referenced was in the United States;</p> <p>7 is that correct?</p> <p>8 A. Again, I'm not trying to be argumentative.</p> <p>9 It's -- I'm not permitted to disclose any details about</p> <p>10 any cases, no matter how minute they may seem. 14:55:08</p> <p>11 Q. Okay. So Exhibit 1 -- turn back to Exhibit 1.</p> <p>12 Paragraph 33, the very last sentence of this</p> <p>13 paragraph says, "Google charged the government for this</p> <p>14 data, which the government paid for."</p> <p>15 Did I read that correctly? 14:55:26</p> <p>16 A. You did, sir.</p> <p>17 Q. What do you mean by "Google charged the</p> <p>18 government for this data"?</p> <p>19 A. They charged a processing fee for their</p> <p>20 custodian of records to produce the data. They typically 14:55:36</p> <p>21 would bill the United States Attorney's Office. But</p> <p>22 occasionally I would either get those bills by mistake or</p> <p>23 see those bills if the United States Attorney's Office</p> <p>24 did not pay in a timely fashion.</p> <p>25 Q. Okay. And Google requested reimbursement from 14:55:58</p> <p style="text-align: right;">Page 98</p>	<p>1 Q. BY MR. SPILLY: Okay. And this statute</p> <p>2 authorizes companies like Google to seek that</p> <p>3 reimbursement; is that correct?</p> <p>4 MR. MCGEE: Object to the form, speculation.</p> <p>5 THE WITNESS: It does, sir. 14:58:01</p> <p>6 Q. BY MR. SPILLY: All right. If you go to</p> <p>7 paragraph 36 of Exhibit 1.</p> <p>8 Let me know when you can see that.</p> <p>9 A. I can see it, sir.</p> <p>10 Q. Okay. So paragraph 36, you say, "In my 14:58:27</p> <p>11 approximate 18 years of cyber crime investigations, I am</p> <p>12 not aware of Google denying production of responsive</p> <p>13 information (to an administrative subpoena, grand jury</p> <p>14 subpoena, search warrant or other court order) because it</p> <p>15 was from private browsing activity." 14:58:48</p> <p>16 Did I read that correctly?</p> <p>17 A. You did, sir.</p> <p>18 Q. Okay. If you know, how would Google know if</p> <p>19 information came from a private browsing session?</p> <p>20 MR. MCGEE: Object to the form. 14:59:01</p> <p>21 You can answer.</p> <p>22 THE WITNESS: Sir, because of this lawsuit -- I</p> <p>23 believe in the Complaint, I think there's an indicator</p> <p>24 that Google has access to for private browsing activity.</p> <p>25 Q. BY MR. SPILLY: Okay. So you're saying that -- 14:59:31</p> <p style="text-align: right;">Page 100</p>
<p>1 the government pursuant to a statute that authorizes that</p> <p>2 request; is that correct?</p> <p>3 A. Yes, sir. I believe that's the case.</p> <p>4 Q. Okay. If you know, what statute authorizes</p> <p>5 Google to request reimbursement from the government for 14:56:15</p> <p>6 its assistance with these types of investigations?</p> <p>7 A. I don't know what the statute is, sir.</p> <p>8 Q. Okay.</p> <p>9 MR. SPILLY: All right. I am going to introduce</p> <p>10 Exhibit 6. 14:56:46</p> <p>11 (Exhibit 6, 18 USCA Section 2706, marked for</p> <p>12 identification electronically by counsel.)</p> <p>13 Q. BY MR. SPILLY: Let me know when you can see it.</p> <p>14 A. I can see it, sir.</p> <p>15 Q. Okay. So Exhibit 6 is a printout of 18 USC 14:57:02</p> <p>16 Section 2706. And it says at the top, "Cost</p> <p>17 reimbursement."</p> <p>18 Are you familiar with this institute?</p> <p>19 A. I certainly am now. I knew it existed, but I</p> <p>20 didn't know what the number was until probably today. 14:57:24</p> <p>21 Q. Okay. And Google requested reimbursement for</p> <p>22 the work on FBI information requests pursuant to this</p> <p>23 statute; is that correct?</p> <p>24 MR. MCGEE: Object to the form, speculation.</p> <p>25 THE WITNESS: It certainly appears so. 14:57:46</p> <p style="text-align: right;">Page 99</p>	<p>1 sorry.</p> <p>2 You don't have -- so other than -- okay. So</p> <p>3 you're saying that based on allegations in the Complaint,</p> <p>4 you believe that to be true; is that fair?</p> <p>5 MR. MCGEE: Object to the form. 14:59:53</p> <p>6 You can answer.</p> <p>7 THE WITNESS: Not the allegations in the</p> <p>8 Complaint. I believe that there is a marker that Google</p> <p>9 put on data to indicate it. I certainly wasn't aware of</p> <p>10 it when I was at the FBI, but I think Google has that 15:00:15</p> <p>11 information. And a lot more -- and a lot more</p> <p>12 information that I wished I knew they had when I was</p> <p>13 working these cases, quite frankly.</p> <p>14 Q. BY MR. SPILLY: Okay. But you haven't reviewed</p> <p>15 any documents produced by Google in this case; correct? 15:00:39</p> <p>16 A. No, I have not.</p> <p>17 Q. Okay. You don't know for sure that Google has</p> <p>18 the marker that you just referenced; is that correct?</p> <p>19 MR. MCGEE: Object to the form.</p> <p>20 You can answer. 15:00:53</p> <p>21 THE WITNESS: Yeah, I certainly don't know for</p> <p>22 sure.</p> <p>23 Q. BY MR. SPILLY: Okay. So you would be</p> <p>24 speculating that Google has whatever marker you were just</p> <p>25 referencing; is that correct? 15:01:04</p> <p style="text-align: right;">Page 101</p>


<p>1 MR. MCGEE: Object to the form.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: I think it's more -- more than a</p> <p>4 speculation. I believe that in this process, I learned</p> <p>5 that bit of information. I don't recall exactly where it 15:01:19</p> <p>6 came from, but I believe it's more than just speculation.</p> <p>7 Q. BY MR. SPILLY: Did you learn that from counsel?</p> <p>8 A. I -- I don't know. I just said I don't know</p> <p>9 where I learned it from. But I believe that Google has</p> <p>10 that ability. And it makes sense to me. 15:01:44</p> <p>11 Q. Again, you don't know for sure one way or the</p> <p>12 other?</p> <p>13 A. No, I don't. No, I don't.</p> <p>14 Q. Okay. And you're not offering an expert opinion</p> <p>15 on that; is that correct? 15:01:59</p> <p>16 A. Correct.</p> <p>17 Q. And if Google said that it has no way to</p> <p>18 distinguish between private browsing information on the</p> <p>19 one hand and regular browsing information on the other,</p> <p>20 based on the information that is stored in Google's 15:02:16</p> <p>21 server side logs, you wouldn't have any basis to dispute</p> <p>22 that; is that correct?</p> <p>23 MR. MCGEE: Objection to the form.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I would have the statements of 15:02:28</p> <p style="text-align: right;">Page 102</p>	<p>1 many people were involved in that investigation. And I</p> <p>2 can clarify, actually.</p> <p>3 How many people were involved in conducting that</p> <p>4 investigation?</p> <p>5 A. So, respectfully, I think that's going to 15:04:40</p> <p>6 potentially identify which investigation this is. And,</p> <p>7 therefore, I don't believe I'm at liberty to answer that</p> <p>8 question, because I believe it could lead to the</p> <p>9 identification of the investigation, which I am not</p> <p>10 permitted to disclose. 15:04:59</p> <p>11 Q. Okay. But there were multiple people involved;</p> <p>12 is that correct?</p> <p>13 A. I'm not saying that. I'm not saying -- I'm not</p> <p>14 answering the question, sir.</p> <p>15 Q. Okay. Trained law enforcement personnel were 15:05:13</p> <p>16 involved in the investigation referenced in paragraph 35</p> <p>17 of Exhibit 1, though; correct?</p> <p>18 A. As with any investigation, yes.</p> <p>19 Q. Okay. And that investigation involved forensic</p> <p>20 analysis of a fake email account to identify IP address, 15:05:31</p> <p>21 and then submit that to Google; is that correct?</p> <p>22 A. When you say "forecast investigation," I mean,</p> <p>23 we read the email headers. So it wasn't like we had to</p> <p>24 use a forensic tool to decipher the headers. It was just</p> <p>25 my expertise being able to decode the headers and know 15:05:55</p> <p style="text-align: right;">Page 104</p>
<p>1 subjects I interviewed who indicated that information was</p> <p>2 done during private browsing mode.</p> <p>3 Q. BY MR. SPILLY: Okay. But you're not offering</p> <p>4 an expert -- you're not opining as an expert that --</p> <p>5 sorry. Strike that. 15:02:59</p> <p>6 Okay. Going back to paragraph 35 of Exhibit 1.</p> <p>7 Let me know when you're back there.</p> <p>8 A. I'm there, sir.</p> <p>9 Q. Okay. So 35 discusses the cyberstalking</p> <p>10 investigation that you participated in; is that correct? 15:03:21</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And the second sentence, it says, "The</p> <p>13 email account" -- "This email account was created with</p> <p>14 false information"; is that correct?</p> <p>15 A. Yes, sir. 15:03:34</p> <p>16 Q. Was the email account that you're referencing in</p> <p>17 this paragraph a Gmail account?</p> <p>18 A. It was, sir.</p> <p>19 Q. Okay. How many people were involved in the</p> <p>20 investigation that you described in paragraph 35 of 15:03:59</p> <p>21 Exhibit 1?</p> <p>22 A. Can you repeat that question, sir?</p> <p>23 Q. Sure.</p> <p>24 So just this investigation in paragraph 35 of</p> <p>25 Exhibit 1 that you're describing, I just want to know how 15:04:22</p> <p style="text-align: right;">Page 103</p>	<p>1 what the originating IP address was. So if you want to</p> <p>2 call that forensic technique, that's fine with me.</p> <p>3 Q. Okay. The fact that you were able to piece</p> <p>4 together the identity of the suspect referenced in</p> <p>5 paragraph 35 of Exhibit 1 does not mean that it's easily 15:06:15</p> <p>6 done by Google; is that correct?</p> <p>7 MR. MCGEE: Object to the form, speculation.</p> <p>8 THE WITNESS: I think it would be very easy</p> <p>9 knowing what I know now on what Google retains. I think</p> <p>10 Google easily could have identified this person and 15:06:34</p> <p>11 probably saved us a whole lot of time in our</p> <p>12 investigation.</p> <p>13 Q. BY MR. SPILLY: All right. And just to</p> <p>14 reiterate, you haven't reviewed any documents produced by</p> <p>15 Google in this case; correct? 15:06:48</p> <p>16 A. Other than the Complaint, no, sir.</p> <p>17 Q. And that is not -- and you understand that the</p> <p>18 doc -- that the Complaint is not a document produced by</p> <p>19 Google; correct?</p> <p>20 A. That is correct, yes. So the answer to the 15:06:58</p> <p>21 question is no, I have not reviewed any Google documents</p> <p>22 for this case, sir.</p> <p>23 Q. Okay. So when you say that -- when you</p> <p>24 reference your understanding of what Google retains, that</p> <p>25 is completely -- that is not based on reviewing any 15:07:14</p> <p style="text-align: right;">Page 105</p>

<p>1 evidence produced by Google in this case; correct?</p> <p>2 A. That is correct, sir.</p> <p>3 Q. Okay. And the goal of the investigation</p> <p>4 referenced in paragraph 35 -- sorry. Strike that.</p> <p>5 So what is -- okay. You say that your 15:07:40</p> <p>6 understanding of what Google retains is not based on</p> <p>7 reviewing any evidence produced by Google in this case.</p> <p>8 So my question is: What is that based on? What</p> <p>9 is your understanding based on?</p> <p>10 A. My understanding of what, sir? 15:07:58</p> <p>11 Q. Understanding of what Google retains.</p> <p>12 A. It's based on information I have learned since</p> <p>13 signing on to this matter.</p> <p>14 Q. Where did you learn that information?</p> <p>15 A. From the -- from the Complaint. It's the root 15:08:16</p> <p>16 of the case.</p> <p>17 Q. Okay. So -- and you're not offering -- you're</p> <p>18 not offering an expert opinion on what information is</p> <p>19 retained by Google; is that correct?</p> <p>20 A. Well, it's certainly not in my report. It seems 15:08:42</p> <p>21 obvious.</p> <p>22 Again, I think we're splitting hairs here, sir.</p> <p>23 Q. Okay. Going back to paragraph 35 of Exhibit 1.</p> <p>24 A. I'm there, sir.</p> <p>25 Q. Okay. The FBI used that information -- the 15:09:02</p> <p style="text-align: right;">Page 106</p>	<p>1 is that right?</p> <p>2 THE REPORTER: I'm just looking. Could be.</p> <p>3 That looks right, Exhibit 7.</p> <p>4 (Exhibit 7, Order on Plaintiffs' Motion for</p> <p>5 Sanctions for Discovery Misconduct, Redacted 15:27:22</p> <p>6 Version of Document Sought to be Sealed, marked</p> <p>7 for identification electronically by counsel.)</p> <p>8 MR. MCGEE: All right. It shows as uploaded on</p> <p>9 my end. Mr. Nelson and Counsel, when you have access to</p> <p>10 that exhibit, please let me know. 15:27:32</p> <p>11 THE WITNESS: I can see it, sir.</p> <p>12 Q. BY MR. MCGEE: Carl, is it showing on your end?</p> <p>13 MR. SPILLY: Yeah, I can see it. So I object to</p> <p>14 this exhibit as beyond the scope of my direct.</p> <p>15 Go ahead. 15:27:51</p> <p>16 Q. BY MR. MCGEE: Mr. Nelson, do you have Exhibit</p> <p>17 Number 7 in front of you?</p> <p>18 A. Yes, sir, I do.</p> <p>19 Q. And that's docket entry 593-3 in the case of</p> <p>20 Chasom Brown, et al., versus Google LLC, filed in the 15:28:00</p> <p>21 Northern District of California?</p> <p>22 A. Yes, sir.</p> <p>23 Q. This is a document that was filed on May 31st of</p> <p>24 2022?</p> <p>25 A. Yes, sir. 15:28:14</p> <p style="text-align: right;">Page 108</p>
<p>1 information referenced in paragraph 35 to identify the</p> <p>2 individual; is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Okay. And the goal of the investigation was to</p> <p>5 identify the person that sent a specific cyberstalking 15:09:17</p> <p>6 email; is that correct?</p> <p>7 A. And to gather further evidence of that crime and</p> <p>8 potentially other crimes.</p> <p>9 MR. SPILLY: Okay. Why don't we go off the</p> <p>10 record. 15:09:55</p> <p>11 THE VIDEOGRAPHER: Going off the record at</p> <p>12 3:10 p.m.</p> <p>13 (Recess.)</p> <p>14 THE VIDEOGRAPHER: We are back on the record at</p> <p>15 3:26 p.m. 15:26:18</p> <p>16 MR. SPILLY: Okay. I have no further questions</p> <p>17 at this time.</p> <p>18 Ryan, I think you have redirect?</p> <p>19 MR. MCGEE: I do. Thank you.</p> <p>20 15:26:27</p> <p>21 EXAMINATION</p> <p>22 BY MR. MCGEE:</p> <p>23 Q. I am going to mark an exhibit first. I have an</p> <p>24 exhibit that I'd like to introduce.</p> <p>25 MR. MCGEE: I think we're on Exhibit Number 7; 15:27:04</p> <p style="text-align: right;">Page 107</p>	<p>1 Q. Previously, when you were being questioned by</p> <p>2 counsel about the Incognito markers -- do you recall that</p> <p>3 testimony?</p> <p>4 A. I do, sir.</p> <p>5 Q. Do you recall testifying to Counsel that you 15:28:24</p> <p>6 believe you had reviewed something indicating that Google</p> <p>7 actually did mark activity as private browsing? Do you</p> <p>8 recall that testimony?</p> <p>9 A. I do, sir.</p> <p>10 MR. SPILLY: Objection. Leading. 15:28:39</p> <p>11 Q. BY MR. MCGEE: Prior to your testimony here</p> <p>12 today, do you recall going over this document with</p> <p>13 counsel, including myself?</p> <p>14 MR. SPILLY: Same objection.</p> <p>15 THE WITNESS: I do. 15:28:49</p> <p>16 Sorry, sir. I'm not giving you a chance to</p> <p>17 object.</p> <p>18 MR. SPILLY: Sorry, Mr. Nelson.</p> <p>19 Same objection. Leading.</p> <p>20 Q. BY MR. MCGEE: And is this document the document 15:28:55</p> <p>21 that you were referring to that provided more insight</p> <p>22 into how Google, as you put it, marked private browsing</p> <p>23 data?</p> <p>24 MR. SPILLY: Objection. Objection. Leading.</p> <p>25 THE WITNESS: Yes, sir. 15:29:10</p> <p style="text-align: right;">Page 109</p>

<p>1 Q. BY MR. MCGEE: And, Mr. Nelson, you reviewed 2 this entire document; correct?</p> <p>3 MR. SPILLY: Same objection.</p> <p>4 THE WITNESS: Yes, sir.</p> <p>5 Q. BY MR. MCGEE: Okay. And, again, that's -- in 15:29:20 6 addition to Plaintiffs' Complaint, that's what forms 7 your -- the basis for your understanding that Google 8 marks certain browsing activity as private; correct?</p> <p>9 MR. SPILLY: Object to the form and leading.</p> <p>10 THE WITNESS: Yes, sir, it is. 15:29:36</p> <p>11 Q. BY MR. MCGEE: And, Mr. Nelson, during your 12 questioning with Counsel, you were asked about various 13 paragraphs in your -- excuse me -- in your expert report 14 and whether those formed opinions in your case -- or in 15 your report. Do you remember that? 15:29:51</p> <p>16 MR. SPILLY: Object to the form.</p> <p>17 THE WITNESS: I do, sir.</p> <p>18 Q. BY MR. MCGEE: Sorry, if you can just give him 19 the two or three seconds.</p> <p>20 A. I know. My bad. I'm sorry. 15:29:59</p> <p>21 Q. So, again, Mr. Nelson, during your questioning 22 with Counsel, you were asked about various paragraphs and 23 whether they are opinions in this case. Do you recall 24 that?</p> <p>25 A. I do, sir. 15:30:16</p> <p style="text-align: right;">Page 110</p>	<p>1 Q. And, also, paragraphs 20 through 31, they 2 summarized your experience at the FBI, some legal 3 requirements for the various requests that you made with 4 the FBI, and also Google's responsiveness to those 5 requests. Do you recall providing that testimony to 15:32:02 6 Mr. Spilly's questions?</p> <p>7 MR. SPILLY: Object to the form.</p> <p>8 THE WITNESS: Yes, sir, I do.</p> <p>9 Q. BY MR. MCGEE: So while those paragraphs are not 10 technically opinions, do they still help in forming the 15:32:17 11 opinion that you've provided in this case?</p> <p>12 MR. MCGEE: Objection. Vague.</p> <p>13 THE WITNESS: Yes, they absolutely assisted me 14 in developing my expert opinion.</p> <p>15 Q. BY MR. MCGEE: Okay. And the same with 15:32:34 16 paragraphs 33 through 37, were those -- although they 17 were summaries and your recollection of the 18 responsiveness of Google to FBI requests, they still 19 assisted in forming your opinions in this case; correct?</p> <p>20 MR. SPILLY: Objection. Leading. 15:32:56</p> <p>21 THE WITNESS: Yes, sir, they did.</p> <p>22 Q. BY MR. MCGEE: And do you recall testifying to 23 the absence of an account name in the account column for 24 the Excel spreadsheets that Google provided to you?</p> <p>25 A. Yes, sir, I do. 15:33:15</p> <p style="text-align: right;">Page 112</p>
<p>1 Q. And could you please summarize your expert 2 opinion here?</p> <p>3 A. My expert opinion --</p> <p>4 MR. SPILLY: Object --</p> <p>5 Sorry, Mr. Nelson. 15:30:29</p> <p>6 Object to the form.</p> <p>7 THE WITNESS: Can you repeat the question, 8 Mr. McGee?</p> <p>9 Q. BY MR. MCGEE: Sure.</p> <p>10 Would you please summarize the expert opinion 15:30:39 11 that you are providing in this case?</p> <p>12 A. My expert opinion is that Professor Zervas' 13 expert report is misleading and doesn't include the fact 14 that Google retains data based on IP address and stores 15 that data. 15:31:06</p> <p>16 Q. Okay. And I believe that you testified that 17 paragraphs 9 through 15 of your report were experience 18 but not opinions. Do you recall testifying to that?</p> <p>19 A. Yes, sir.</p> <p>20 MR. SPILLY: Objection. Mischaracterizes. 15:31:22</p> <p>21 THE WITNESS: Yes, I do, sir.</p> <p>22 Q. BY MR. MCGEE: But does your experience help 23 form and support your opinions in this case?</p> <p>24 A. It does. It's critical to my expert opinion, is 25 my experience, my knowledge, my skills, my abilities. 15:31:40</p> <p style="text-align: right;">Page 111</p>	<p>1 Q. Approximately how many administrative subpoenas 2 did you personally request during your investigations 3 with the FBI?</p> <p>4 A. It's an estimation, but I believe I personally 5 requested dozens, somewhere between 20 and 60, subpoenas 15:33:36 6 to Google.</p> <p>7 Q. And that was you personally; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Did you also assist with administrative 10 subpoenas that you did not personally author? 15:33:50</p> <p>11 A. Not only assist, but I assigned many of them as 12 acting supervisor and reviewed results of many of them. 13 I would put them in the hundreds of subpoena category as 14 far as numbers go.</p> <p>15 Q. Okay. And for grand jury subpoenas, can you 15:34:08 16 approximate how many you personally submitted to Google?</p> <p>17 A. Again, it's an estimation. Probably less than 18 administrative subpoenas, but somewhere in the 20 to 40 19 range that I personally submitted.</p> <p>20 Q. And then the same question, not personally 15:34:32 21 submitting but that you are involved with, either in 22 supervising or submitting. Can you put a number on that?</p> <p>23 MR. SPILLY: Object to the form.</p> <p>24 THE WITNESS: So, again, it will be another 25 estimation. It will actually be more than the 15:34:48</p> <p style="text-align: right;">Page 113</p>

<p>1 administrative subpoenas. I would put that number</p> <p>2 somewhere between 40 and 120.</p> <p>3 Q. BY MR. MCGEE: Okay. And search warrants.</p> <p>4 Approximately how many search warrants did you submit</p> <p>5 personally to Google? 15:35:07</p> <p>6 MR. SPILLY: Object to the form.</p> <p>7 THE WITNESS: Again, an estimation. I would say</p> <p>8 personally I was the affiant on at least three search</p> <p>9 warrants at the top end. Maybe as many as ten.</p> <p>10 Q. BY MR. MCGEE: And then, also, how many did you 15:35:31</p> <p>11 assist with or supervise that you did not personally</p> <p>12 swear on?</p> <p>13 MR. SPILLY: Object to the form.</p> <p>14 THE WITNESS: So, again, back to the dozens and</p> <p>15 dozens. I would put it somewhere between 20 and 50. 15:35:41</p> <p>16 Maybe more.</p> <p>17 Q. BY MR. MCGEE: Okay. And in those examples that</p> <p>18 you just testified to, that's where Google would provide</p> <p>19 these Excel spreadsheets; correct?</p> <p>20 A. Yes, sir, that's correct. 15:36:01</p> <p>21 Q. And in your experience with the FBI, you</p> <p>22 reviewed those spreadsheets in both conducting</p> <p>23 investigations, assisting -- and also assisting with</p> <p>24 investigations; correct?</p> <p>25 MR. SPILLY: Objection. Leading. 15:36:18</p> <p style="text-align: right;">Page 114</p>	<p>1 provided to the FBI?</p> <p>2 MR. SPILLY: Objection. Vague.</p> <p>3 THE WITNESS: I would say prior to being</p> <p>4 retained for this matter I did not have anywhere near a</p> <p>5 full understanding of what Google captures and maintains 15:38:05</p> <p>6 for its users, whether in normal viewing mode or private</p> <p>7 viewing mode.</p> <p>8 Q. BY MR. MCGEE: And the information that Google</p> <p>9 provided, I think you've testified previously that some</p> <p>10 of it would start with search terms that targets or 15:38:29</p> <p>11 defendants used on Google.com. Do you recall testifying</p> <p>12 to that?</p> <p>13 MR. SPILLY: Objection. Mischaracterizes prior</p> <p>14 testimony.</p> <p>15 THE WITNESS: I do. 15:38:45</p> <p>16 Q. BY MR. MCGEE: And some of the other information</p> <p>17 that would be provided was subscriber information?</p> <p>18 A. Yes, sir.</p> <p>19 MR. SPILLY: Objection. Leading.</p> <p>20 Q. BY MR. MCGEE: The name associated with the 15:38:56</p> <p>21 account?</p> <p>22 MR. SPILLY: Same objection.</p> <p>23 THE WITNESS: Yes, sir.</p> <p>24 Q. BY MR. MCGEE: Payment information, if it was a</p> <p>25 paid account, like hosting a domain or paying for Google 15:39:07</p> <p style="text-align: right;">Page 116</p>
<p>1 THE WITNESS: Yes. And supervising</p> <p>2 investigations.</p> <p>3 Q. BY MR. MCGEE: And would you use the absence of</p> <p>4 account information in the -- in the column of the Excel</p> <p>5 spreadsheet to assist with your investigation? 15:36:31</p> <p>6 MR. SPILLY: Object to the form.</p> <p>7 THE WITNESS: Yes, I would, sir.</p> <p>8 Q. BY MR. MCGEE: And how so?</p> <p>9 MR. SPILLY: Object to the form.</p> <p>10 THE WITNESS: To me, it was an indicator that it 15:36:46</p> <p>11 was probable that the information came from an</p> <p>12 Incognito -- or, I'm sorry, a private browsing session.</p> <p>13 Q. BY MR. MCGEE: That was based in part on your</p> <p>14 discussions with the targets and defendants that you were</p> <p>15 investigating? 15:37:11</p> <p>16 MR. SPILLY: Objection. Leading.</p> <p>17 THE WITNESS: Yes. And with other agents.</p> <p>18 Q. BY MR. MCGEE: And those targets and defendants</p> <p>19 confirmed that that activity was done in private</p> <p>20 browsing; correct? 15:37:23</p> <p>21 MR. SPILLY: Objection. Leading.</p> <p>22 THE WITNESS: Yes, sir, they did.</p> <p>23 Q. BY MR. MCGEE: Prior to your review of the</p> <p>24 Exhibit Number 7, the sanctions order, did you have an</p> <p>25 understanding of what was available from Google to be 15:37:40</p> <p style="text-align: right;">Page 115</p>	<p>1 drive space?</p> <p>2 MR. SPILLY: Same objection. Leading.</p> <p>3 THE WITNESS: Yes, sir.</p> <p>4 Q. BY MR. MCGEE: And when you were able to analyze</p> <p>5 the Excel spreadsheets, do you recall analyzing the 15:39:18</p> <p>6 browsing activity that was reflected in those Excel</p> <p>7 spreadsheets provided by Google?</p> <p>8 MR. SPILLY: Objection. Leading.</p> <p>9 THE WITNESS: Yes, sir.</p> <p>10 Q. BY MR. MCGEE: And did that activity start on 15:39:34</p> <p>11 Google Search?</p> <p>12 MR. SPILLY: Same objection.</p> <p>13 THE WITNESS: Yes, sir. It started with a</p> <p>14 Google search, and then there would be entries for</p> <p>15 results, and then there would be an entry for if the user 15:39:47</p> <p>16 clicked on one of those results.</p> <p>17 Q. BY MR. MCGEE: So the activity that Google</p> <p>18 shared with you in your role at the FBI included target</p> <p>19 and defendant activity on non-Google websites; correct?</p> <p>20 MR. SPILLY: Objection. Leading. 15:40:10</p> <p>21 THE WITNESS: Correct, sir.</p> <p>22 MR. MCGEE: If I could have just one moment.</p> <p>23 I don't have any further questions.</p> <p>24 THE REPORTER: Any further questions, Counsel?</p> <p>25 MR. SPILLY: Can you give me five minutes? 15:40:45</p> <p style="text-align: right;">Page 117</p>

<p>1 MR. MCGEE: Yeah, sure.</p> <p>2 MR. SPILLY: Okay. Be back in five.</p> <p>3 THE VIDEOGRAPHER: Going off the record at</p> <p>4 3:41 p.m.</p> <p>5 (Recess.) 15:44:51</p> <p>6 THE VIDEOGRAPHER: We are back on the record at</p> <p>7 3:46 p.m.</p> <p>8 MR. SPILLY: Okay. Welcome back, Mr. Nelson.</p> <p>9 So I just have some questions about questions</p> <p>10 your counsel just asked you. 15:46:03</p> <p>11</p> <p>12 FURTHER EXAMINATION</p> <p>13 BY MR. SPILLY:</p> <p>14 Q. So you said a few minutes ago that while you</p> <p>15 were at the FBI, you came to the conclusion that the 15:46:12</p> <p>16 absence of account information in the Excel spreadsheets</p> <p>17 produced by Google was an indicator someone was using</p> <p>18 private browsing mode; is that fair?</p> <p>19 A. That's fair, sir.</p> <p>20 Q. Okay. And you said you came to that conclusion 15:46:32</p> <p>21 based in part on conversations with suspects; is that</p> <p>22 correct?</p> <p>23 A. That's correct, sir.</p> <p>24 Q. Okay. I believe earlier today you said only</p> <p>25 three suspects ever told you they were using private 15:46:48</p> <p>Page 118</p>	<p>1 that some -- there are users out there that do not have</p> <p>2 Google accounts; is that correct?</p> <p>3 A. Certainly.</p> <p>4 Q. Okay. And so if Google produced information</p> <p>5 about a user without a Google account, then the Google 15:48:44</p> <p>6 account field in that Excel would also be empty; correct?</p> <p>7 A. I don't know for sure, but that makes sense.</p> <p>8 Q. Well, if Google -- if a user doesn't have a</p> <p>9 Google account, then they won't have any account info; is</p> <p>10 that correct? 15:49:09</p> <p>11 A. Correct.</p> <p>12 MR. SPILLY: Okay. All right. I believe that</p> <p>13 is it for me.</p> <p>14 MR. MCGEE: I do have one followup, if you'll</p> <p>15 indulge me. I apologize for not asking this. 15:49:19</p> <p>16</p> <p>17 FURTHER EXAMINATION</p> <p>18 BY MR. MCGEE:</p> <p>19 Q. Mr. Nelson, during one of the breaks you were</p> <p>20 asked to look at your records of when you were first 15:49:26</p> <p>21 contacted by David Reign. Do you recall doing that?</p> <p>22 A. I did, yes.</p> <p>23 Q. And what was the date of that contact from</p> <p>24 Mr. Reign?</p> <p>25 A. It was May 5th. 15:49:39</p> <p>Page 120</p>
<p>1 browsing mode in interviews; is that correct?</p> <p>2 A. That's correct. It also is based on other</p> <p>3 agents' experiences.</p> <p>4 Q. Okay. What years did the suspects -- the three</p> <p>5 suspects that you referenced -- sorry. Strike that 15:47:06</p> <p>6 again.</p> <p>7 For the three suspects that volunteered that</p> <p>8 information to you in interviews, what years did those</p> <p>9 interviews take place?</p> <p>10 A. Respectfully, sir, I can't answer questions 15:47:21</p> <p>11 about the cases themselves, and that includes the dates.</p> <p>12 Q. Okay. How would it be relevant to your</p> <p>13 investigation that a subject is using private browsing</p> <p>14 mode?</p> <p>15 A. The only way it would be relevant to my 15:47:44</p> <p>16 investigation is to show that they were trying to hide</p> <p>17 the activity.</p> <p>18 Q. Okay. And so do you view trying to hide</p> <p>19 browsing activity as a reason for suspicion?</p> <p>20 A. By itself not necessarily, but in conjunction 15:48:03</p> <p>21 with other case information, it certainly would be an</p> <p>22 indicator -- if someone's trying to hide their activity,</p> <p>23 that -- that is clearly an indicator important in my</p> <p>24 investigation.</p> <p>25 Q. Okay. And we -- but we also discussed earlier 15:48:28</p> <p>Page 119</p>	<p>1 Q. And did you also look through those records to</p> <p>2 determine the first time that you spoke with counsel at</p> <p>3 Morgan & Morgan?</p> <p>4 A. I did, sir.</p> <p>5 MR. SPILLY: Objection. Leading. 15:49:52</p> <p>6 Q. BY MR. MCGEE: And what date was that?</p> <p>7 A. It was May 9th, sir.</p> <p>8 Q. So when you were earlier testifying to the</p> <p>9 May 29th date, after refreshing your recollection with</p> <p>10 these records, are the May 5th and May 9th dates more 15:50:06</p> <p>11 accurate?</p> <p>12 MR. SPILLY: Objection. Leading and form.</p> <p>13 THE WITNESS: Yes, sir, they are. They're the</p> <p>14 actual dates.</p> <p>15 Q. BY MR. MCGEE: Okay. Thank you. 15:50:20</p> <p>16 MR. MCGEE: That's all I have.</p> <p>17 THE REPORTER: Off the record, Counsel?</p> <p>18 MR. SPILLY: Yeah. That's it for me.</p> <p>19 Thank you, Mr. Nelson.</p> <p>20 THE VIDEOGRAPHER: We are off the record at 15:50:29</p> <p>21 3:50 p.m., and this concludes today's testimony given by</p> <p>22 David Nelson. The total number of media used was one and</p> <p>23 will be retained by Veritext Legal Solutions.</p> <p>24 (Time Noted: 3:50 p.m.)</p> <p>25 --oOo--</p> <p>Page 121</p>

<p>1 I declare under the penalty of perjury under the</p> <p>2 laws of the State of California that the foregoing is</p> <p>3 true and correct.</p> <p>4 Executed on _____, 2022, at</p> <p>5 _____, _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 122</p>	<p>1 RYAN MCGEE, ESQ.</p> <p>2 rmcgee@forthepeople.com</p> <p>3 July 11, 2022</p> <p>4 RE: BROWN VS. GOOGLE LLC</p> <p>5 JULY 6, 2022, DAVID NELSON, JOB NO. 5302302</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 ___ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 ___ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p style="text-align: right;">Page 124</p>
<p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do</p> <p>5 hereby certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all objections</p> <p>10 made by counsel at the time of the examination were</p> <p>11 recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel for</p> <p>17 any party to said action, nor am I related to any party</p> <p>18 to said action, nor am I in any way interested in the</p> <p>19 outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 11th day of July, 2022.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">  LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462 Page 123 </p>	<p>1 _X_Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF</p> <p>2 Transcript - The witness should review the transcript and</p> <p>3 make any necessary corrections on the errata pages included</p> <p>4 below, notating the page and line number of the corrections.</p> <p>5 The witness should then sign and date the errata and penalty</p> <p>6 of perjury pages and return the completed pages to all</p> <p>7 appearing counsel within the period of time determined at</p> <p>8 the deposition or provided by the Federal Rules.</p> <p>9 ___ Federal R&S Not Requested - Reading & Signature was not</p> <p>10 requested before the completion of the deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 125</p>

1 RE: BROWN VS. GOOGLE LLC 2 DAVID NELSON, JOB NO. 5302302 3 ERRATA SHEET 4 PAGE____ LINE____ CHANGE_____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE_____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE_____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 WITNESS Date 25 _____	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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